



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

DATE: August 26, 2013

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Ben Brancel, Secretary *Ben Brancel*
John Petty, Administrator, Agricultural Resource Management Division

SUBJECT: Soil and Water Conservation, Amending Ch. ATCP 50, WI Admin. Code (Final Draft Rule)

PRESENTED BY: Agricultural Resource Management Division

REQUESTED ACTION:

At the September 10, 2013, Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to approve the final draft rule revising ch. ATCP 50, related to soil and water resource management.

SUMMARY:

Background

ATCP 50 is being revised primarily to implement the new and modified farm runoff control standards adopted by the DNR in 2011. These new and modified DNR standards (the "2011 DNR standards") require farmers to improve pasture management, maintain a tillage setback, control discharges of process wastewater, meet Phosphorus Index targets for nutrient management, and meet targeted performance standards for Total Maximum Daily Loads ("TMDLs"). Under state law, DATCP is responsible for developing conservation practices and other methods to implement performance standards for farms. In most cases, farmers are not required to implement new and modified performance standards unless they receive an offer of 70 percent cost-sharing.

Other changes in the rule are designed to improve administration of the SWRM program, including grants management, cost-sharing and establishing qualifications for engineering practitioners certified under the program.

Rule Content

Among other things, this rule will:

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- Update the farm conservation standards in subch. II of ch. ATCP 50, and related definitions, including updates to the RUSLE 2 definition.
- Define a method for determining the distance (between 5 and 20 feet) for a tillage setback.
- Revise the soil erosion control standard to include pastures.
- Modify nutrient management planning requirements for pastures, creating a soil testing alternative and threshold for certain livestock stocking rates.
- Clarify the conservation compliance requirements for the farmland preservation program, including a phase-in for the farm runoff standards updated in NR 151.
- Simplify the manner by which engineering practitioners are certified.
- Update the technical and other standards for practices using state cost-share funds.
- Better support implementation of state performance standards on farms.

The following provides more detailed analysis by subchapter.

Soil and Water Conservation on Farms

Farm Conservation Practices

To implement the 2011 DNR standards, this rule modifies the farm conservation practices as follows:

- *Soil Erosion Control.* This rule requires farmers to manage pastures as well as cropland so that soil erosion rates do not exceed a tolerable rate ("T"). For most soils, the tolerable rate ("T") is equivalent to 2 to 5 tons of soil loss per acre per year. The rule also clarifies how soil erosion is calculated in the case of wind erosion. The RUSLE 2 equation, as defined in the rule, must be used to measure sheet and rill erosion, and the Natural Resource Conservation Service ("NRCS") Wind Erosion Prediction System ("WEPS") model is used to measure wind erosion.
- *Nutrient Management and Phosphorus Index.* This rule clarifies the process for annual review of all nutrient management plans to ensure that updates are prepared when needed. It also defines how nutrient management planning will be implemented for pastures by identifying circumstances in which alternatives for soil testing may be used, and establishing animal stocking rates that would be exempt from nutrient management planning requirements.
- *Tillage Setback.* This rule defines the method for determining a setback over 5 feet but less than or equal to 20 feet, and requires that landowners receive written documentation in support of requiring setbacks over 5 feet in width.
- *Process Wastewater.* This rule implements this new performance standard by adding a standard for cost-sharing in subch. VIII.

Subject to the cost-share requirements in this rule, which remain unchanged, landowners must implement these new farm conservation practices to achieve compliance with the 2011 DNR standards. As part of this rule revision, however, DATCP plans to phase-in compliance with the 2011 DNR standards for landowners who claim Farmland Preservation Program ("FPP") tax credits. This phase-in will enable farmers to plan in advance for necessary changes in conservation practices on their farms, and allow an orderly transition for counties from a system focused on implementation of the original performance standards (adopted by DNR in 2002) to the new standards (adopted by DNR in 2011).

This rule continues to allow farmers to choose the best way to comply with this rule. A farmer may choose among conservation practices that are appropriate for his or her farm, as long as those practices achieve compliance. In creating a cost-share standard for feed storage runoff control systems, this rule includes a note that explains the options to pursue low-cost approaches to address a feed storage discharge, pointing out that farmers' choices may be affected by whether they receive state and other cost-share funds intended to achieve long-term prevention and other conservation objectives. Farmers continue to have access to a range of resources such as DATCP, UW-Extension, NRCS and the county land and water conservation departments to secure technical assistance.

Cost-Sharing Required

DATCP has not changed the requirement for cost-share availability when a landowner is required to install conservation practices that change "existing" agricultural facilities or practices. However, the DNR rule revision in 2011 changed the definition of "existing" and "new" agricultural facilities and practices for cost-share purposes. DNR's rule changed cost-share requirements in certain cases where landowners must close unused manure storage structures. This rule also changes the cost-share provisions for landowners installing conservation practices in non-farm settings and on land owned by local governments.

County Soil and Water Conservation Programs

Land and Water Resource Management Plans

This rule modifies the required content of county plans to increase accountability, facilitate coordination with DNR, and support incorporation of elements that satisfy planning requirements under Section 319 of the Clean Water Act.

Farmland Preservation; Conservation Standards

In addition to addressing 2011 DNR standards, this rule incorporates changes to the conservation compliance requirements for FPP to reflect the passage of the Working Lands Initiative in 2009 Act 28, the state's 2009-2011 biennial budget (codified primarily in ch. 91, Stats.). The key changes are as follows:

- This rule ensures that a farmer's eligibility for a Farmland Preservation Program tax credit is based on meeting state conservation standards that mirror DNR performance standards and prohibitions, except that this rule phases in implementation of the 2011 DNR standards for FPP participants, making them effective as of 2016.
- Landowners with pre-2009 agreements are only required to meet the conservation requirements specified in their agreements, as under prior laws.
- The concept of compliance is defined. Landowners must comply with state standards on the entire farm, as defined in this rule, not just the land for which they are claiming a tax credit. However, landowners can remain in compliance with the nutrient management standard when they add or convert land as long they update their plans in a timely manner. To streamline county recordkeeping for DATCP monitoring purposes, the rule establishes minimum requirements for documenting county compliance determinations.
- FPP participants may continue to claim tax credits if they enter into performance schedules (previously "compliance schedules") with the county and make reasonable progress in implementing farm conservation practices identified in the schedule. Schedules may provide landowners with as many as five years to achieve compliance. Landowners must be notified that they are responsible for determining their eligibility to receive a FPP tax credit independent of their commitment to implement a performance schedule.
- Counties have expanded responsibilities related to compliance monitoring, including more detailed standards for entering into performance schedules with farmers. County authority is clarified to include farm inspections. Counties must review a farmer's compliance at least once every 4 years, not 6 years as previously required.
- Counties must issue certificates of compliance to enable farmers to fulfill the documentation requirements in the tax law, and may issue certificates to create a record of compliance.
- As in the past, a county could issue a notice of noncompliance if it found that a program participant was not complying. Counties now have the option to issue a notice if the landowner wishes to "refrain from collecting a tax credit," in addition to notices issued based on a failure to meet program requirements. This rule explains the need for counties to exercise sound judgment in handling the critical aspects related to monitoring conservation compliance on farms, including treatment of non-compliance and the issuance of notices of non-compliance.

Grants to Counties

Currently, DATCP must follow an annual allocation process to award grants to counties, including extensive procedures for revising the allocation plan. Allocation decisions are made according to priorities and other criteria, which are slightly changed by this rule to place greater emphasis on statewide priorities involving agriculture. DATCP may work with DNR and other funders to identify sources of financial support to address locally identified priorities not related to agriculture. This rule also simplifies the process for revising the allocation plan related to transfers and reallocations as noted below.

Annual Staffing Grants to Counties

This rule codifies a past decision by DATCP to waive the minimum staffing grant of \$85,000 per county, ensuring that DATCP funding is used to support the county's actual costs for staff. To ensure that counties spend most of their allocation on staffing costs, this rule caps reimbursements for support costs at 10 percent of a county's annual grant. This rule also modifies the criteria DATCP uses to set priorities for making grant awards. Reflecting the end of the priority watershed program, obsolete procedures and references to that program have been removed.

Grants for Conservation Practices

This rule codifies a past decision by DATCP (through a rule waiver) to reinstate cost-sharing to resolve notices of discharge and notices of intent issued to farmers by DNR for discharges from livestock operations. It also formalizes procedures for the voluntary transfer of cost-share funds between two counties, or the award of grants from a reserve established in the original allocation plan. In regard to requests for extensions of projects, this rule simplifies the process for making requests and allows DATCP to accept "late" requests for extensions received before February 15th of the subsequent grant year if good cause is demonstrated. Consistent with past waivers issued by DATCP, this rule allows extended cost-share funds to be pooled and used for any extended project in the county.

Cost-Share Grants to Landowners

This rule makes changes to support improved compliance with farm conservation practices by focusing the use of cost-share funds. Specifically, it sets a 50 percent cost-share rate for cost-shared practices on land owned by local governments and for certain practices that are not required to implement performance standards and prohibitions on farms. To conserve limited cost-share funds, it also clarifies that economic hardship is not available to non-farm landowners.

This rule adds details to the procedures for recording cost-share contracts, including the timing for recording, the use of department grant funds to cover recording costs, procedures for submitting reimbursement requests and related documentation, and elimination of the requirement to record contracts involving nutrient management and other soft practices.

Grants to "Cooperators"

This rule spells out the procedures for awarding grant funds to a cooperator (a person or entity under a contract with DATCP) for projects or other activities authorized under s. 92.14 (10), Wis. Stats., for requiring grant contracts for payment of funds, for authorizing a one-year extension of funded projects or activities, and for imposing specific requirements on counties that receive funding, as cooperators, to ensure accountability and appropriate use of department funds.

Soil and Water Professionals

Conservation Engineering Practitioners

Under s. 92.18, Stats., the department is directed to establish, to the extent possible, requirements for certification in conformance with the federal engineering approval system. This rule creates a more flexible and responsive framework for certifying engineering practitioners that better matches the federal system, and ultimately maximizes statewide capacity of conservation staff qualified to design and install farm and other conservation practices. In place of a certification form incorporated directly into the current rule, this rule allows DATCP to grant certification for any practice authorized by NRCS and DNR as long as DATCP uses the application requirements specified in the rule.

To improve coordination of the evaluation and rating of applicants, this rule allows DATCP to designate a state soil and water conservation engineer, to function similarly to the NRCS state engineer. Under this revamped framework, certification will likely include some non-agricultural practices, and, accordingly, the certification designation has been changed from “agricultural” to “conservation” engineering practitioner.

This rule also imposes restrictions on the use of a person’s certification authority to sign engineering documents, conforming to NRCS restrictions that define the review and approval process for designs for engineered practices.

Nutrient Management Planners

This rule recognizes that DATCP may develop minimum standards for department-approved training courses for farmers who develop their own nutrient management plans.

County and Local Ordinances

This rule adds provisions to ensure compliance with the requirements of the livestock facility siting law (“siting law”). See s. 93.90, Stats., and ch. ATCP 51, Wis. Admin. Code. It makes clear that counties can enforce water quality standards in a siting permit even if cost-sharing is not provided. Consistent with the siting law, a county cannot require a permit under its manure storage ordinance if it also requires a facility to obtain a permit under a siting ordinance. This rule also describes the requirements, mandated under the siting law, when local ordinances impose more stringent regulations.

The standards for manure storage ordinances have been updated to reflect changes in the management of manure, including the storage for non-manure wastes such as feed leachate and milking center waste, and revisions of applicable technical standards to reflect those changes. The rule also creates new oversight responsibilities for DATCP, allowing the department to mandate manure storage application forms for local use, or to conduct selective review of manure storage ordinances.

Regarding more stringent local regulation, this rule describes requirements imposed under the siting law to implement local ordinances with these additional provisions.

Standards for Cost-Shared Practices

This rule adds these general provisions that apply to all cost-shared practices:

- Expansion of the concept of voluntary use of updated technical standards, an option first adopted in ATCP 50 in 2007 in connection with the nutrient management performance standard. Under this procedure, a landowner or grant recipient may agree to use updated NRCS or DNR standards as part of a cost-shared project if certain conditions are satisfied (e.g., the newer standard is at least as protective of the environment as the referenced standard codified in the rule).
- A process that allows DATCP to require advance approval of a practice design in special cases before any county can receive a cost-share reimbursement for installation of the practice.

In addition to updating NRCS and other technical standards incorporated into this subchapter, this rule:

- Creates a standard for systems to control discharges of feed storage leachate to complement the cost-share standard that addresses discharges of milkhouse wastewater (see s. ATCP 50.77).
- Clarifies the responsibility of a landowner to maintain the storage capacity of the original storage facility built with DATCP cost-share funds, if animal units are added during the maintenance period of the manure storage cost-share contract.
- Establishes conditions for requiring nutrient management plans as part of a cost-shared project involving barnyard or feed storage runoff control.
- Recognizes the use of a limited set of practices such as access roads and streambank and shoreline protection in non-farm contexts, but imposes restrictions to prevent misuse of limited state cost-share funds (e.g., access roads cannot be used to pay for road building for public use).
- Separates cattle crossings from access roads as a cost-shared practice and creates a new standard for "stream crossing."
- Eliminates heavy use area protection as a separate cost-shared practice and allows this practice only as a component of other practices such as barnyard runoff control systems.
- Gives more flexibility to provide cost-share funds for pesticide spill control structures without the requirement of a pesticide management plan in all cases.
- Better defines structural and bioengineering treatments that are cost-shared under the streambank or shoreline protection standard, and makes other changes to that standard.

Standards Incorporated by Reference

Pursuant to s. 227.21, Stats., DATCP has received permission from the attorney general to incorporate the following standards by reference in this rule:

- NRCS technical guide standards and related documentation.
- ASCE and other private sector-developed engineering practice standards.
- State agency (DNR, Department of Transportation) erosion control standards for construction sites and stormwater management.
- UW-Extension publications including milking center waste water management, rotational grazing, and soil and manure testing.
- NRCS standards for determining soil erosion (RUSLE 2, WEPS).

Many of the standards are available electronically. Copies of these standards will be on file with DATCP and the legislative reference bureau. DATCP has discontinued the practice of including key documents on standards as appendices and will utilize its website to indicate where documents may be obtained.

Waivers

Under current rule, DATCP may grant a waiver from any standard or requirement under this rule if DATCP finds that the waiver is necessary to achieve the objectives of this rule. The DATCP secretary must sign the waiver. DATCP may not waive a statutory requirement.

Land and Water Conservation Board

The land and water conservation board has reviewed this rule as required by s. 92.04(3) (a), Stats.

Public Hearings

DATCP held five public hearings on the original rule proposal as listed below:

- March 26, 2013, in Eau Claire
- March 27, 2013, in Appleton
- March 28, 2013, in Tomahawk
- April 3, 2013 in Platteville
- April 4, 2013 in Madison

DATCP accepted written comments until April 30, 2013. A total of 56 people attended and registered at the public hearings, and 49 people submitted written comments. The department received both general comments related to the rule as a whole and specific comments related to certain provisions within the rule. The general comments were largely supportive of the rule revision. Specific comments ranged from requests for modification of rule provisions to

opposition to a proposed change. A summary of public hearing attendance and comments received can be found in Appendix A.

***DATCP's Rule Changes in Response to
Public Hearings and Rules Clearinghouse Comments***

DATCP made changes in response to comments received through public hearings, Legislative Council Rules Clearinghouse and consultation with Wisconsin Department of Natural Resources (DNR). The key changes are listed in order based on the rule provisions affected:

Phosphorus Index (PI): The initial department rule proposal incorporated NR 151.04 (the PI standard) by reference as described in ATCP 50.04 (1). Comments focused on the lack of a new subparagraph under ATCP 50.04 to specifically address the PI standard in NR 151.04. The practices needed to achieve the PI levels stated in NR 151.04 are incorporated as options when developing a nutrient management plan in accordance with ATCP 50.04(3). However to address the concern, the final rule includes a note specifying that nutrient management plans developed in accordance with ATCP 50.04(3), which include a PI calculation value, can be used to demonstrate compliance with s. NR 151.04 and additional guidance related to the PI can be found in s. NR 151.04(1)(b) Note.

Pastures: Comments focused on the requirement that pastures have nutrient management (NM) plans in order to demonstrate compliance with the PI and tolerable soil loss levels. Issues related to use-value assessment, soil testing costs, woodlot pasturing practices, pastures with low animal densities, and concerns regarding calculations of soil loss and PI on pastures were all noted. The department considered the public comments regarding these issues with nutrient management planning on pastures and proposes to address those concerns by creating alternatives for certain low-input pasture systems. ATCP 50.04 (3) modifies nutrient management planning requirements for pastures, including a soil testing alternative and threshold for certain livestock stocking rates.

Reference to A2809: Comments opposed the inclusion of the outdated 1998 version of the A2809 Nutrient Application Guidelines for Field, Vegetable and Fruit Crops in WI. The department removes references to the 1998 version of A2809 in ATCP 50.04 (3)(f)4. Note and elsewhere, and instead references the 2006 version of A2809 or latest version of that publication as agreed to by the landowner. Keeping the 2006 version of A2809 is important since many agronomists will need time to update their nutrient management plan development process to recognize new fertilizer recommendations.

Tillage Setback Clarifications: Comments received from the Clearinghouse and the public focused on modification of the tillage setback standard [ATCP 50.04 (4)] to clarify responsibilities, considerations and methods for achieving compliance. Because a technical standard does not currently exist that provides guidance for effective, consistent application of a tillage setback for the purpose of maintaining streambank stability and integrity, the department made modifications to address the concerns by including consideration of the

cause of bank erosion and soil type, and a consistent approach when making determinations for increased setback distances by consulting with NRCS or department engineering specialists.

Farmland Preservation Program (FPP) Changes: Comments included opposition to the definition of “farm” that would only include contiguous tax parcels, requests for clarification on timelines in meeting the new performance standards, roles for monitoring compliance and the potential consequences of requiring FPP claimants to meet the 2011 DNR standards. The department revision to ATCP 50.16 modifies the definition of a farm to include all land owned by the landowner when making conservation compliance determinations. The department also clarifies language regarding the timeframes for meeting the conservation standards through the use of a performance schedule and the length of time to achieve compliance via a performance schedule.

Land and Water Resource Management (“LWRM”) Planning Benchmarks: In addition to support for increased accountability, comments from the Clearinghouse and several counties stressed the need to clarify the benchmarking concept used in relation to planning and reporting. The department clarified this by changing ATCP 50.12 (2) (j) to specify that the county use measurable annual and multi-year benchmarks to periodically monitor and measure its progress in meeting performance targets and achieving plan goals and objectives under a workplan.

Additional LWRM Elements: In consultation with DNR, DATCP was encouraged to ensure that LWRM plans incorporate elements required by federal and other grant programs. The department adopted the DNR proposed changes to ATCP 50.12 (2)(a), (b)(Note), (c), (f)(Note), (g), (i) and (3) (c) (Note) with modifications.

Emphasize Agricultural Priorities: Individual counties and WLWCA opposed DATCP’s heightened focus on agriculture in making funding decisions (ATCP 50.30), emphasizing the need for DATCP to fund LWRM plans equally, and the benefits of non-farm cost-sharing to protect natural resources. The department retained the rule’s agricultural focus based on the original reasons for its inclusion, including making more resources available to meet the statutory requirement for cost-sharing to implement conservation practices on farms and maximizing cost-share funds needed to implement the expanded number of performance standards on farms. However, the final rule includes language that the department will work with DNR and other funders to identify sources of financial support to address locally-identified priorities that may not be accorded the same weight as farm-based statewide priorities.

Cost-Sharing on Government-Owned Land: Comments primarily from counties and towns opposed the proposed provision in ATCP 50.40 (3) (b), which eliminated cost-sharing on government-owned land. Comments focused on the limited financial resources available to towns in particular for conservation, the benefits of cost-sharing to protect natural resources, and the unintended consequences of eliminating cost-sharing for farmland owned by local governments. After consideration of these comments, the department revised the

proposed rule provision to allow cost-sharing at a maximum rate of 50 percent on government-owned land. This change responds to concerns raised by public comments while addressing the department's main objective of focusing cost-share funds to implement the expanded number of performance standards on privately-owned farms.

Engineering Certification Requirements: Several comments fully supported aligning the certification requirements of the department system of certifying conservation engineering practitioners with the NRCS job approval system. A critical piece of this alignment requires the removal of the certification form from the rule, which the department initially accomplished through rule waiver. The Legislative Council Rules Clearinghouse asked DATCP to ensure that it was following the legal requirements for excluding a form from a rule. The department revised ATCP 50.46 (3) (b) to allow the agency to grant certification for any practice authorized by NRCS and DNR without incorporating the certification form into the rule as long as the department uses the procedures prescribed in the rule for developing a form.

Engineering Approvals: Several comments focused on ensuring that the process for checking project documents paralleled NRCS's procedures under its job approval authority. The department redrafted ATCP 50.46 (11) (b) to require that on any project approval documentation, the person approving designs or construction plans is responsible for insuring that the documents have been checked, and may discharge this responsibility by checking the work or accepting another's check of the work. For practices requiring job class I and II, the same person preparing the design may perform the check. For all other job classes, the check must be performed by a third party with appropriate certification.

Local Ordinance Review: Individual farmers and groups commented on the need for oversight of local regulation and opposed the change in ATCP 50.56 (6) regarding review requirements for manure storage ordinances. The final draft rule authorizes the department to require a county, city, village or town to use a department approved application for permitting the construction or closure of a manure storage system or structure, or to submit a proposed or adopted ordinance for review upon request of the department. The department will review and comment on the consistency of the ordinance with statutory requirements. A department review generally would be triggered by a request or complaint, but the department could initiate a review for other reasons.

Process Wastewater Standard: Farm groups supported the department implementation of the process wastewater performance standards but wanted assurances that the rule does not mandate costly containment systems but allows for flexibility in determining the best approach to manage wastewater. The department made a minor change in the note for ATCP 50.705(b) to clarify that it is not necessary to make significant structural changes, as long as the landowner reduces the level of discharge below the "significant" threshold, as determined in s. NR 151.055 (3). The note also encourages that, when state cost-sharing funds are available, landowners should be provided cost-sharing to install the suite of practices that

both correct and prevent discharges, therefore ensuring adequate protection of groundwater and surface water. Farms with small storage areas and minor discharges have lower cost options available to meet the technical standards.

Require Nutrient Management for Barnyards: Internal review of the cost-sharing standards for barnyard runoff control called for clarifying the requirements related to nutrient management plans. The department clarified ATCP 50.64 (5) (c) by requiring a nutrient management plan only if the landowner receives more than \$25,000 in DATCP cost-share payments for the runoff control system.

DATCP made no changes to the following rule provisions:

End Minimum Staffing Grant: Twenty eight counties requested reinstatement of the \$85,000 minimum staffing grant established in ATCP 50.32(5)(b), and eliminated by waiver on December 9, 2011. The department made no change to the proposed rule language for the same reasons that the department waived the requirement for minimum awards. The proposed rule accomplishes the following: appropriately accounts for the closure of the priority watershed program, eliminates the \$85,000 minimum grant award since it does not reflect a county's actual costs for staff [the operative consideration for funding under s. 92.14(6)(b), Wis. Stats.], enables the department to more fairly allocate the \$1.1 million reduction in the appropriation for staffing grants among the counties.

Limiting Support Costs: A few counties opposed capping the reimbursement of support costs at 10 percent of the county's annual allocation. The department made no change to proposed language in ATCP 50.32 (5) (b) for the reasons that originally prompted its change; namely, maximizing the amount of DATCP funds that are used by counties to pay the direct costs of salary and fringe benefits, and encouraging counties to take on more responsibility to pay for program costs through non-DATCP funds.

Reduced Cost-Share Rates: While a few non-county organizations supported a 50 percent maximum cost-share rate for certain non-farm practices, many counties and the Wisconsin Land and Water Conservation Association opposed this change, focusing on the need for DATCP to fund Land and Water Resource Management plans equally, and the benefits of non-farm cost-sharing to protect natural resources. The department retained this rule change [ATCP 50.42 (1) (dm)] based on the original reasons for its inclusion: making more resources available to meet the statutory requirement for cost-sharing to implement conservation practices on farms, and maximizing cost-share funds needed to implement the expanded number of performance standards on farms.

Heavy Use Area Protection: Several counties opposed elimination of ATCP 50.74, or heavy use area protection as a stand-alone practice. No change was made for the proposed rule language for reasons that originally prompted its elimination: heavy use area protection cannot be used to cost-share parking lots or other heavy use areas, but can still be used as part of a barnyard or other farm system.

DATCP response to some additional Clearinghouse comments:

1. In its comment 2.h., the Clearinghouse asked us to consider moving s. ATCP 50.16(3) (a) 4 (Note) out of a note and into rule text. We elected to make no change, because we wanted to be consistent in our use of this guidance to local governments. In the Livestock Facility Siting rule ATCP 51, the following language, which is nearly identical to the proposed note in ATCP 50, is also included in the rule as a note:

ATCP 51.08(3) Note: A political subdivision should exercise sound judgment in deciding whether to withdraw a local approval under sub. (2). The political subdivision may consider extenuating circumstances, such as adverse weather conditions, that may affect an operator's ability to comply. A political subdivision should give the operator prior notice, and a reasonable opportunity to demonstrate compliance, before withdrawing a local approval.

2. In its comment 2.k., the Clearinghouse suggested altering the numbering [in s. ATCP 50.30 (3) (o)]. We have opted for a cleaner look based on a recommendation from our legal department.
3. In its comment 2.u., the Clearinghouse suggested changes in the use of the terms “cost-share” and “cost-sharing” throughout the rule. We reviewed the comment and did make changes to ss. ATCP 50.34 (6) (a) 3. and 50.61 (3) for consistency, but otherwise elected to retain the current usages for the following reasons:
 - a. The terms are used extensively in both federal and state conservation grant programs and have been for decades. The terms are well known and well understood by the agricultural community and conservation partners.
 - b. “Cost-sharing” and “cost-shared” are both used in s. 92.14 (6), Wis. Stats., one of the statutory provisions interpreted by this proposed rule. Both appear to be used in the statutory provision as adjectives, which may be confusing to some readers. Our consistent use of the terms (see below) in the rule helps the reader.
 - c. We have reviewed the entire ch. ATCP 50 and are consistently using the words as follows:
 - “Cost-shared” is used only as an adjective and only when modifying the nouns “practice” or “project.” This usage makes clear that the named conservation practice is eligible for funding by, or was one funded by, this grant program. More than one entity (generally the landowner plus others) share the costs, in some proportion, in order to install the practice/project. It distinguishes the types of practices (eligible) from other types of practices, which are not eligible for the grant program.
 - “Cost-share” is used only as an adjective and only when modifying nouns such as funds, contracts, purposes, reimbursement, amount, payments, rates, recipients, allocation, etc. (never modifies “practice” or “project”). This usage makes clear that a grant program is involved in which costs are shared in some stated/required proportion.

- “Cost-sharing” is used only as a noun. It is used when referring to the accumulated programmatic funds or funding available to help pay for installing a conservation practice or project.
4. In its comment 5.b., the Clearinghouse suggested defining “precipitated manure sludge” and “supernatant.” We elected to make no changes because we believe no definitions are required for these terms. Both terms describe components of the “processing derivatives” and are used to clarify and define that term. These component terms, although somewhat technical, are generally understood by readers who would be considering projects involving manure management. Specifically, the term “supernatant” is commonly found in dictionaries and is defined in the Merriam Webster dictionary as “a clear liquid overlying material deposited by settling, precipitation, or centrifugation.” The term “precipitated manure sludge” (actually the material found below the supernatant) includes enough explanatory information that, again, readers involved in any manure project would understand what it means.

Summary of, and Comparison with, Existing or Proposed Federal statutes and Regulations

NRCS has adopted standards for conservation practices cost-shared by NRCS. Current DATCP rules incorporate many NRCS standards by reference. In most cases, the standards apply only to conservation practices cost-shared with DATCP funds. But in some cases (such as nutrient management), DATCP rules incorporate the NRCS standards as mandatory pollution control standards. Enforcement of these mandatory standards is generally contingent on cost-sharing (there are limited exceptions).

While NRCS sets national standards, standards vary, to some extent, among states. NRCS coordinates its Wisconsin standard-setting process with DATCP, DNR and others. For purposes of Wisconsin’s soil and water conservation program, DATCP may incorporate NRCS standards as written or may modify the standards as appropriate. This rule modifies current DATCP rules that incorporate NRCS standards by reference. This rule incorporates updated NRCS standards, or modifies NRCS standards to make them more clear or workable in Wisconsin’s soil and water conservation program, as appropriate. It allows landowners receiving cost-sharing to voluntarily take advantage of new NRCS standards not yet incorporated into rule, thereby ensuring that they get the most value for their investment in conservation practices.

NRCS certifies engineering practitioners who design, install or approve conservation engineering practices cost-shared by NRCS. DATCP certifies practitioners who perform similar functions under DATCP rules. As noted above, this rule makes changes to better match the state and federal programs, which ultimately will benefit the landowners who rely on technical services from engineering practitioners.

The United States Department of Agriculture administers a number of federal programs that offer voluntary conservation incentives to farmers. The Environmental Quality Incentives Program (“EQIP”) is a key program offering cost-sharing for conservation improvements, including nutrient management plans, manure storage improvements and other conservation practices. As a result of confidentiality requirements, federal cost-sharing provided to landowners through this and other

NRCS cost-share programs cannot be publicly disclosed. Without accurate historical data about past use of NRCS cost-sharing to implement state conservation standards, it is difficult to account for the role these funds may play in the future.

Other programs, such as the Conservation Reserve Program ("CRP") and the Conservation Reserve Enhancement Program ("CREP") also provide cost-sharing and other incentives for conservation practices. DATCP attempts to coordinate state programs for conservation funding with relevant federal programs.

Comparison with Rules in Adjacent States

This comparison examines how surrounding states are addressing issues related to the 2011 DNR standards, with particular focus on the implementation of such standards through farmland preservation activities. In general, the adjacent states do not use statewide performance standards specifically designed to address polluted runoff from agricultural sources. However, these states have various regulations and procedures in place to address many of the polluted runoff sources that these rule revisions address. All four states use the Phosphorus Index in some form but none use it in the same manner as NR 151 provides. For example, phosphorus management strategies in Michigan are implemented as part of the state's Generally Accepted Agricultural and Management Practices (GAAMPs). Wisconsin's approach differs from the programs in adjacent states in that it has more detail in its Phosphorus Index, is more quantitative and has more research to validate it. Also, in Wisconsin, pursuant to s. 281.16, Stats., cost-sharing must be made available to existing agricultural operations before the state may require compliance with the standards. Cost-sharing is often tied to compliance responsibilities in adjacent states, but there are instances where farmers must meet standards other than the Phosphorus Index as part of regulatory programs.

Illinois

Using a different framework and programming, Illinois implements several standards similar to those adopted in Wisconsin. In addition to implementing a Phosphorus Index for large livestock operations, Illinois encourages the equivalent of a tillage setback for croplands through a property tax incentive related to the construction of livestock waste management facilities. This incentive applies to the installation of vegetative filter strips in cropland that is surrounding a surface-water or groundwater conduit. Illinois law does not allow raw materials, by-products and products of livestock management facilities, including milkhouse waste, silage leachate, and other similar products to be discharged to waters of the state.

While Illinois has a statewide farmland preservation program in which landowners may restrict the use of their land to agricultural or related uses in exchange for tax credits, the program does not include conservation compliance requirements.

Iowa

Like Illinois, Iowa requires that nutrient management plans for livestock operations of 500 or more animal units be based on the Phosphorus Index. Iowa does not require a separation distance between tillage activities and waterbodies. Iowa prohibits discharges to waters of the state, polluting waters of the state and discharge to road ditches. Medium-sized livestock operations are required to install runoff controls to eliminate discharges of process wastewater into waters of the state. See Iowa's website at:
http://www.iowadnr.gov/portals/idnr/uploads/afo/fs_desncriteria_medcafo.pdf

While Iowa operates a county-based statewide farmland preservation program in which landowners may restrict the use of their land to agricultural or related uses in exchange for tax credits, the program does not include conservation compliance requirements.

Michigan

Michigan relies on GAAMPs [see *Generally Accepted Agricultural and Management Practices for Manure Management and Utilization* (January 2012)] to support the Michigan Agriculture Environmental Assurance Program ("MAEAP"), which includes a compliance verification process that ensures nuisance protection to farmers under Michigan's Right to Farm law. GAAMPs cover standards similar to those in Wisconsin, including standards for process wastewater and pasture management. These standards are implemented as part of the state's right to farm law and its complaint investigation program. The state assesses problems identified through complaints, and farmers must take corrective action to earn nuisance protection under the right to farm law.

Michigan does not require a separation distance between tillage activities and waterbodies. The state's regulatory requirements regarding process wastewater only apply to permitted concentrated animal feeding operations, but discharges from smaller farms are generally prohibited as a violation of water quality standards.

While Michigan has a statewide farmland preservation program in which landowners may restrict the use of their land to agricultural or related uses in exchange for tax credits, the program does not include conservation compliance requirements

Minnesota

Minnesota implements a variation of a tillage setback in limited settings, requiring a 16.5 foot (one rod) grass strip along certain public drainage ditches as well as vegetated strips, restored wetlands, and other voluntary set-aside lands through federal, state and local programs. For process wastewater, Minnesota rules place a limit of less than 25 mg/l BOD5 (biological oxygen demand) that can be released to surface water and, if released to a leach field, the threshold is less than 200 mg/l BOD5. State and local officials work with pasture owners to prevent and abate water quality violations (Minn. R. ch. 7050 and 7060) that may be created by sediment or nutrient runoff from poorly managed pastures.

Under its feedlot program, Minnesota imposes mandatory requirements on about 25,000 registered feedlots. This program requires feedlot owners, ranging in size from small farms to large-scale commercial livestock operations, to “register with the MPCA, and meet the requirements for runoff discharge, manure application and storage, and processed wastewater.”

While Minnesota has a statewide farmland preservation program in which landowners may restrict the use of their land to agricultural or related uses in exchange for tax credits, the program does not include conservation compliance requirements.

Summary of Factual Data and Analytical Methodologies

To develop this rule, DATCP participated in the DNR advisory group convened as part of the revision of NR 151, worked with DNR to achieve a revision of NR 151 consistent with the statutory framework and the interests of regulated groups and other stakeholders, informally worked with interest groups including organizations representing farm groups, environmental groups, and government entities such as county land and water conservation departments, conducted listening sessions with affected parties to secure input, and prepared an assessment of the business impacts using DNR’s assessment and a methodology similar to the one used for the 2002 nonpoint rule revision.

Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of an Economic Impact Analysis

In preparing its analysis and supporting documentation, the department consulted with stakeholder groups, reviewed rule documents developed by DNR related to the adoption of the 2011 DNR standards including revised fiscal estimate and final rule order, and estimated costs using a methodology similar to the one used for the 2002 nonpoint rule revision.

Effects on Small Business

Most impacts of this rule will be on farmers, a great majority of whom qualify as “small businesses.” The analysis of the impacts on farms takes into consideration the following factors:

- The proposed rule does not add standards for farms (which were created by DNR in 2011), but focuses on implementation of DNR’s standards. DNR’s analysis of the 2011 standards was consulted.
- In its implementation of the 2011 DNR standards, this rule includes measures intended to minimize the financial impacts on farmers, including accommodations to limit the burdens of nutrient management planning for pastures, and limitations on increasing the tillable setback over 5 feet.

- Most farmers will be insulated from some of the costs of implementation by the state's cost-share requirement and the limited state funding available to provide cost-sharing.
- For farmers receiving farmland preservation program tax credits, this rule provides farmers flexibility to minimize the financial impacts related to compliance (which range from \$8 to \$12 million state-wide), including a delay in the effective date for compliance with the 2011 DNR standards, the use of performance schedules, pursuit of cost-sharing for which they are eligible, use of a tax credit to offset some implementation costs, or if needed, withdrawal from the farmland preservation program to avoid unmanageable costs.

The proposed rule changes will have small, but positive impacts on businesses other than farmers. Those businesses include nutrient management planners, soil testing laboratories, farm supply organizations, conservation engineering practitioners, and contractors installing farm conservation practices. The *Final Regulatory Flexibility Analysis*, which will be filed with this rule, provides a more complete analysis of this issue.

Next Steps

If the Board approves this final draft rule, the department will submit the final draft rule to the Governor's Office of Regulatory Compliance. If the Governor's office approves the final draft rule, the department will then submit the rule to the legislature for legislative committee review. If the legislature has no objection to the rule, the department Secretary will sign the final rulemaking order and transmit it for publication. The rule will take effect on the first day of the third month following publication.

**PROPOSED ORDER
OF THE STATE OF WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
ADOPTING RULES**

1 The Wisconsin department of agriculture, trade and consumer protection proposes the following
2 permanent rule *to repeal* ATCP 50.01 (11) and (18) (a) (Note), 50.28 (5) (b) 1. (Note), 50.32 (5)
3 (b) (Note) and (8) (c) 3., 50.40 (9) (c) 1. to 3., (L) 1. to 3., (14) (a), (b) and (c), 50.52 (2) (e),
4 50.62 (5) (e) 6. (Note), 50.63 (5) (Note), 50.67 (3) (c) (Note), 50.68 (4) (a) (Note), 50.69 (4) (a)
5 7. (Note), 50.70 (4) (b) 9. (Note), 50.71 (3) (b) 3. (Note), 50.72 (3) (a) 7. (Note), 50.73 (3) (d) 12.
6 (Note), 50.74, 50.75 (4) (a) 2. (Note), 50.76 (5) (a) 5. (Note), 50.77 (4) (a) 5. (Note), 50.80 (3)
7 (a) 9. (Note), 50.82 (4) (c) 3. (Note), 50.83 (3) (a) 9. (Note), 50.84 (5) (a) (Note), 50.85 (4) (a) 2.
8 (Note), 50.86 (4) (b) 8. (second Note), 50.87 (4) (a) 3. (Note), 50.88 (2) (a), 50.88 (2) (d) and (f)
9 and (3) (a) 5. (Note), 50.89 (3) (b) 3. and 4. and 4. (Note), 50.90 (3) (b) 2. (Note), 50.91 (3) (b) 8.
10 (Note), 50.92 (3) (b) 2. (Note), 50.93 (4) (a) 2. (Note), 50.94 (3) (a) 5. (Note), 50.95 (3) (a) 4.
11 (Note), 50.96 (3) (b) 7. (Note), 50.97 (3) (b) (Note), 50.98 (3) (a) (Note), Appendices A to G of
12 ch. ATCP 50; *to renumber* ATCP 50.28 (5) (a) 1., 50.30 (3) (o), 50.62 (5) (e) 6., 50.88 (2) (c)
13 and (e); *to renumber and amend* ATCP 50.28 (5) (a) 1. (Note), 50.40 (9) (c) (intro.) and (L)
14 (intro.), and (14) (intro.), 50.46 (3) and (11), 50.66 (3) (a) 3. (Note), 50.88 (2) (b); *to amend*
15 ATCP 50.01(17), (18) (a), (b) and (c), (20), (27) (Note), (31) (a) and (b) and (33), 50.04(1),
16 50.04 (2) and (Note) and (3) (a), (b), (d), (dm) 1. (Note), (e) (Note), (f) (intro.) and 4. (Note) and
17 (h) (intro.), 50.08 (1) (intro.) and (a) (Note), (2) (Note) and (5) (a) (Note), 50.10 (1) (b) and
18 (Note), 50.12 (2) (a), (b) (Note), (c), (f) (Note), (g), (i) and (j) and (3) (c) (Note), 50.16 (6) (a) 1.

1 and 2., (b)1., (c) (intro.) and 2., and (d), 50.18 (1) (b), 50.26 (2) (a), 50.28 (1) (e) and (Note) and
2 (5) (a) 2. and 3. and (b) (intro.), 50.30 (1), (2) (intro.), (b), (c) and (d), and (3) (b), (g), (h) and
3 (m), 50.32 (3) (a) (Note) and (b), (5) (a) (Note), (7) (b) and (8) (b) and (c) 2. and 4., 50.34 (1)
4 (b), (3) (a) and (Note), (c) (Note) and (d) and (6) (a) 3. and (b), 50.36 (1) and (2) (a), 50.40 (3)
5 (a) (Note), (4), (7) (b), (9) (d), (j) (Note) and (n), (10) (b), (11) (b) (intro.), 2. and 3. and (17),
6 50.42 (4) (intro.), 50.46 (title), (3) (title), (4) (a), (5) (a) and (Note), (6) (b), (7) (a), (9) (c) 2., (10)
7 and (12), 50.50 (2) (intro.), (d) and (g) (Note), (4) (intro.) and (c) (Note), and (8) (b) (Note) and
8 (c) (Note), 50.52 (1) (g) and (Note) and (2) (d), 50.54 (1) (Note) and (2) (b), 50.56 (2) (e) and (f),
9 (4) (intro.), (a), (b), (c) and (Note) and (6), 50.60 (1) (a) (Note), 50.61 (title) and (1), 50.62 (1)
10 (e) 1. and 3., (3) (d) (Note) and (5) (e) 1. to 5. and (f), 50.63 (5), 50.64 (1) (a), (b) and (e) and (5)
11 (a) and (b), 50.65 (title), (1), (2), (3) (intro.), (a) and (Note) and (b), 50.66 (title), (1), (2) (3)
12 (intro.), (a) and (b), 50.67 (3) (a), (b) and (c), 50.68 (4) (a), 50.69 (1) and (4) (a) 1. to 7. and (b),
13 50.70 (4) (b) 1. to 9., 50.71 (1) and (3) (b) 1. to 3., 50.72 (3) (a) 1. to 3. and 5. to 7., 50.73 (3) (d)
14 1. to 12., 50.75 (4) (a) 1. and 2., 50.76 (5) (a) 2. to 4., 50.77 (4) (a) 1. and (Note) and 2. to 4.,
15 50.78 (3) (a) (Note), 50.79 (2) (intro.) and (3) (a) 1. and (b), 50.80 (3) (a) 1. to 6., 7. (Note) and
16 8., 50.82 (4) (c) 1. to 3., 50.83 (3) (a) 1. to 3., 5. to 7. and 9., 50.84 (5) (a), 50.85 (4) (a) 1. and 2.,
17 50.86 (4) (b) 1. to 8. and (first Note), 50.87 (4) (a) 1. to 3., 50.88 (title), (1), (2) (intro.) and (3)
18 (a) 1. to 5. and (c), 50.89 (3) (b) 1. and 2, 50.90 (3) (b)1. and 2., 50.91 (3) (b) 1. to 8., 50.92 (3)
19 (b) 1. and 2., 50.93 (4) (a) 1. and 2., 50.94 (3) (a) 1. to 5., 50.95 (3) (a) 1. to 4., 50.96 (3) (b) 1. to
20 7., 50.97 (3) (a); **to repeal and recreate** ATCP 50.16 (title), (1), (2), (3), (4) and (5), 50.26 (2) (a)
21 (Note), 50.32 (5) (b) and (7) (c) 4. and (Note), 50.34 (1) (b) (Note), 50.40 (10) (b) (Note), 50.46
22 (1) and (2), 50.56 (3), 50.88 (3) (b); and **to create** ATCP 50.01(2m) and (Note), (15m) and
23 (Note) and (29m), 50.04 (1) (Note), (3) (a) (Note), (b) (Note), (de) and (gm) and (4) and (Note),

1 50.12 (2) (jm), 50.16 (6) (a) 5. and (Note), (b) 3. (Note) and (d) (Note), 50.18 (1) (b) (Note),
2 50.22 (5) and (Note), 50.28 (5) (a) 1. b. and 5. and (c), 50.30 (2) (e) and (f) and (Note), and (3)
3 (o) and (p), 50.32 (3m) and (7) (a) (Note), 50.34 (1) (d), (5m) and (Note) and (6) (a) 3. (Note),
4 50.35, 50.36 (1) (Note), 50.40 (2) (d) and (Note), (3) (b) 12. to 14., (14) (b), (c) and (d) and
5 (Note), 50.42 (1) (a) (Note), (bm), (dg) and (dr) and (Note), 50.46 (2m) and (Note), (3) (b) and
6 (Note) and (11) (b), 50.48 (2) (a) 4. (Note), 50.50 (2) (d) 5. (Note) and (g) (second Note), 50.54
7 (2) (b) 1. and 2., 50.56 (4) (a) (Note), subch. VIII (Note) of ch. ATCP 50, 50.61 (3) and (4) and
8 (Note), 50.62 (1) (b) 6. and (e) 5., (5) (e) 6. to 8., (em) and (f) (Note), 50.64 (1) (v) (Note) and
9 (5) (c) and (second Note), 50.65 (2) (Note) and (2m), 50.66 (3) (a) 4., 50.705, 50.71 (3) (b) 4.,
10 50.76 (5) (a) 6. and 7., 50.77 (4) (a) 6. and 7., 50.82 (4) (c) 4., 50.88 (1) (a) to (h), (2) (c) (Note)
11 and (2m), 50.885, 50.96 (3) (b) 8.; *relating to* soil and water resource management and affecting
12 small business.

**Analysis Prepared by the Department of
Agriculture, Trade and Consumer Protection**

This rule modifies ch. ATCP 50, Wis. Admin. Code, related to Wisconsin's soil and water resource management ("SWRM") program. The department of agriculture, trade and consumer protection ("DATCP" or "department") administers the SWRM program under ch. 92, Stats. The SWRM program is designed to conserve the state's soil and water resources, reduce soil erosion, prevent pollution runoff and enhance water quality.

Statutes Interpreted

Statutes interpreted: ss. 71.57 to 71.61, 71.613 (3), 91.80 and 91.82, ch. 92, and s. 281.16, Stats.

Statutory Authority

Statutory authority: ss. 91.82(3), 92.05 (3) (c) and (k), 92.14 (8), 92.15 (3) (b), 92.16, 92.18 (1), 93.07 (1), and 281.16 (3) (b) and (c).

Explanation of Agency Authority

DATCP has responsibilities imposed by statute for implementing the state's nonpoint source pollution control program. Section 281.16, Stats., requires that DATCP develop rules to implement department of natural resources ("DNR") farm runoff standards, also known as the agricultural performance standards adopted in ch. NR 151, Wis. Admin. Code ("NR 151"). Chapter 92, Stats., establishes the framework for DATCP to operate a statewide program that includes implementation of farm conservation practices, approval of county land and water resource management plans, administration of soil and water resource management grants, oversight of manure storage and other local regulations covering livestock operations, provision of training and engineering practitioner certification, and standards for cost-shared practices. Through ch. ATP 50, Wis. Admin. Code ("ATCP 50"), DATCP carries out these responsibilities. Among other things, ATP 50 ensures that implementation of the farm runoff standards is contingent on cost-share requirements (see s. ATP 50.08).

Related Statutes and Rules

As explained above, this rule is related to s. 281.16, Stats., and NR 151. Chapter 92, Stats., establishes the framework for DATCP to operate a statewide soil and water resource management program. This rule also implements the soil and water conservation requirements in subch. V of ch. 91, Stats.

Plain Language Analysis

Background

ATCP 50 is being revised primarily to implement the new and modified farm runoff control standards adopted by the DNR in 2011. These new and modified DNR standards (the "2011 DNR standards") require farmers to improve pasture management, maintain a tillage setback, control discharges of process wastewater, meet Phosphorus Index targets for nutrient management, and meet targeted performance standards for Total Maximum Daily Loads ("TMDLs"). Under state law, DATCP is responsible for developing conservation practices and other methods to implement performance standards for farms. In most cases, farmers are not required to implement new and modified performance standards unless they receive an offer of 70 percent cost-sharing.

Other changes in the rule are designed to improve administration of the SWRM program, including grants management, cost-sharing and establishing qualifications for engineering practitioners certified under the program.

Rule Content

Among other things, this rule will:

- Update the farm conservation standards in subch. II of ch. ATCP 50, and related definitions, including updates to the RUSLE 2 definition.
- Define a method for determining the distance (between 5 and 20 feet) for a tillage setback.
- Revise the soil erosion control standard to include pastures.
- Modify nutrient management planning requirements for pastures, creating a soil testing alternative and threshold for certain livestock stocking rates.
- Clarify the conservation compliance requirements for the farmland preservation program, including a phase-in for the farm runoff standards updated in NR 151.
- Simplify the manner by which engineering practitioners are certified.
- Update the technical and other standards for practices using state cost-share funds.
- Better support implementation of state performance standards on farms.

The following provides more detailed analysis by subchapter.

Soil and Water Conservation on Farms

Farm Conservation Practices

To implement the 2011 DNR standards, this rule modifies the farm conservation practices as follows:

- *Soil Erosion Control.* This rule requires farmers to manage pastures as well as cropland so that soil erosion rates do not exceed a tolerable rate ("T"). For most soils, the tolerable rate ("T") is equivalent to 2 to 5 tons of soil loss per acre per year. The rule also clarifies how soil erosion is calculated in the case of wind erosion. The RUSLE 2 equation, as defined in the rule, must be used to measure sheet and rill erosion, and the Natural Resource Conservation Service ("NRCS") Wind Erosion Prediction System ("WEPS") model is used to measure wind erosion.
- *Nutrient Management and Phosphorus Index.* This rule clarifies the process for annual review of all nutrient management plans to ensure that updates are prepared when needed. It also defines how nutrient management planning will be implemented for pastures by identifying circumstances in which alternatives for soil testing may be used, and establishing animal stocking rates that would be exempt from nutrient management planning requirements.
- *Tillage Setback.* This rule defines the method for determining a setback over 5 feet but less than or equal to 20 feet, and requires that landowners receive written documentation in support of requiring setbacks over 5 feet in width.
- *Process Wastewater.* This rule implements this new performance standard by adding a standard for cost-sharing in subch. VIII.

Subject to the cost-share requirements in this rule, which remain unchanged, landowners must implement these new farm conservation practices to achieve compliance with the 2011 DNR standards. As part of this rule revision, however, DATCP plans to phase-in compliance with the 2011 DNR standards for landowners who claim Farmland Preservation Program (“FPP”) tax credits. This phase-in will enable farmers to plan in advance for necessary changes in conservation practices on their farms, and allow an orderly transition for counties from a system focused on implementation of the original performance standards (adopted by DNR in 2002) to the new standards (adopted by DNR in 2011).

This rule continues to allow farmers to choose the best way to comply with this rule. A farmer may choose among conservation practices that are appropriate for his or her farm, as long as those practices achieve compliance. In creating a cost-share standard for feed storage runoff control systems, this rule includes a note that explains the options to pursue low-cost approaches to address a feed storage discharge, pointing out that farmers’ choices may be affected by whether they receive state and other cost-share funds intended to achieve long-term prevention and other conservation objectives. Farmers continue to have access to a range of resources such as DATCP, UW-Extension, NRCS and the county land and water conservation departments to secure technical assistance.

Cost-Sharing Required

DATCP has not changed the requirement for cost-share availability when a landowner is required to install conservation practices that change “existing” agricultural facilities or practices. However, the DNR rule revision in 2011 changed the definition of “existing” and “new” agricultural facilities and practices for cost-share purposes. DNR’s rule changed cost-share requirements in certain cases where landowners must close unused manure storage structures. This rule also changes the cost-share provisions for landowners installing conservation practices in non-farm settings and on land owned by local governments.

County Soil and Water Conservation Programs

Land and Water Resource Management Plans

This rule modifies the required content of county plans to increase accountability, facilitate coordination with DNR, and support incorporation of elements that satisfy planning requirements under Section 319 of the Clean Water Act.

Farmland Preservation; Conservation Standards

In addition to addressing 2011 DNR standards, this rule incorporates changes to the conservation compliance requirements for FPP to reflect the passage of the Working Lands Initiative in 2009 Act 28, the state’s 2009-2011 biennial budget (codified primarily in ch. 91, Stats.). The key changes are as follows:

- This rule ensures that a farmer's eligibility for a Farmland Preservation Program tax credit is based on meeting state conservation standards that mirror DNR performance standards and prohibitions, except that this rule phases in implementation of the 2011 DNR standards for FPP participants, making them effective as of 2016.
- Landowners with pre-2009 agreements are only required to meet the conservation requirements specified in their agreements, as under prior laws.
- The concept of compliance is defined. Landowners must comply with state standards on the entire farm, as defined in this rule, not just the land for which they are claiming a tax credit. However, landowners can remain in compliance with the nutrient management standard when they add or convert land as long they update their plans in a timely manner. To streamline county recordkeeping for DATCP monitoring purposes, the rule establishes minimum requirements for documenting county compliance determinations.
- FPP participants may continue to claim tax credits if they enter into performance schedules (previously "compliance schedules") with the county and make reasonable progress in implementing farm conservation practices identified in the schedule. Schedules may provide landowners with as many as five years to achieve compliance. Landowners must be notified that they are responsible for determining their eligibility to receive a FPP tax credit independent of their commitment to implement a performance schedule.
- Counties have expanded responsibilities related to compliance monitoring, including more detailed standards for entering into performance schedules with farmers. County authority is clarified to include farm inspections. Counties must review a farmer's compliance at least once every 4 years, not 6 years as previously required.
- Counties must issue certificates of compliance to enable farmers to fulfill the documentation requirements in the tax law, and may issue certificates to create a record of compliance.
- As in the past, a county may issue a notice of noncompliance if it finds that a program participant is not complying. Counties now have the option to issue a notice if the landowner wishes to "refrain from collecting a tax credit," in addition to notices issued based on a failure to meet program requirements. This rule explains the need for counties to exercise sound judgment in handling the critical aspects related to monitoring conservation compliance on farms, including treatment of non-compliance and the issuance of notices of non-compliance.

Grants to Counties

Currently, DATCP must follow an annual allocation process to award grants to counties, including extensive procedures for revising the allocation plan. Allocation decisions are made according to priorities and other criteria, which are slightly changed by this rule to place greater emphasis on statewide priorities involving agriculture. DATCP may work with DNR and other funders to identify sources of financial support to address locally identified priorities not related to agriculture. This rule also simplifies the process for revising the allocation plan related to transfers and reallocations as noted below.

Annual Staffing Grants to Counties

This rule codifies a past decision by DATCP to waive the minimum staffing grant of \$85,000 per county, ensuring that DATCP funding is used to support the county's actual costs for staff. To ensure that counties spend most of their allocation on staffing costs, this rule caps reimbursements for support costs at 10 percent of a county's annual grant. This rule also modifies the criteria DATCP uses to set priorities for making grant awards. Reflecting the end of the priority watershed program, obsolete procedures and references to that program have been removed.

Grants for Conservation Practices

This rule codifies a past decision by DATCP (through a rule waiver) to reinstate cost-sharing to resolve notices of discharge and notices of intent issued to farmers by DNR for discharges from livestock operations. It also formalizes procedures for the voluntary transfer of cost-share funds between two counties, or the award of grants from a reserve established in the original allocation plan. In regard to requests for extensions of projects, this rule simplifies the process for making requests and allows DATCP to accept "late" requests for extensions received before February 15th of the subsequent grant year if good cause is demonstrated. Consistent with past waivers issued by DATCP, this rule allows extended cost-share funds to be pooled and used for any extended project in the county.

Cost-Share Grants to Landowners

This rule makes changes to support improved compliance with farm conservation practices by focusing the use of cost-share funds. Specifically, it sets a 50 percent cost-share rate for cost-shared practices on land owned by local governments and for certain practices that are not required to implement performance standards and prohibitions on farms. To conserve limited cost-share funds, it also clarifies that economic hardship is not available to non-farm landowners.

This rule adds details to the procedures for recording cost-share contracts, including the timing for recording, the use of department grant funds to cover recording costs, procedures for submitting reimbursement requests and related documentation, and elimination of the requirement to record contracts involving nutrient management and other soft practices.

Grants to "Cooperators"

This rule spells out the procedures for awarding grant funds to a cooperator (a person or entity under a contract with DATCP) for projects or other activities authorized under s. 92.14 (10), Wis. Stats., for requiring grant contracts for payment of funds, for authorizing a one-year extension of funded projects or activities, and for imposing specific requirements on counties that receive funding, as cooperators, to ensure accountability and appropriate use of department funds.

Soil and Water Professionals

Conservation Engineering Practitioners

Under s. 92.18, Stats., the department is directed to establish, to the extent possible, requirements for certification in conformance with the federal engineering approval system. This rule creates a more flexible and responsive framework for certifying engineering practitioners that better matches the federal system, and ultimately maximizes statewide capacity of conservation staff qualified to design and install farm and other conservation practices. In place of a certification form incorporated directly into the current rule, this rule allows DATCP to grant certification for any practice authorized by NRCS and DNR as long as DATCP uses the application requirements specified in the rule.

To improve coordination of the evaluation and rating of applicants, this rule allows DATCP to designate a state soil and water conservation engineer, to function similarly to the NRCS state engineer. Under this revamped framework, certification will likely include some non-agricultural practices, and, accordingly, the certification designation has been changed from “agricultural” to “conservation” engineering practitioner.

This rule also imposes restrictions on the use of a person’s certification authority to sign engineering documents, conforming to NRCS restrictions that define the review and approval process for designs for engineered practices.

Nutrient Management Planners

This rule recognizes that DATCP may develop minimum standards for department-approved training courses for farmers who develop their own nutrient management plans.

County and Local Ordinances

This rule adds provisions to ensure compliance with the requirements of the livestock facility siting law (“siting law”). See s. 93.90, Stats., and ch. ATCP 51, Wis. Admin. Code. It makes clear that counties can enforce water quality standards in a siting permit even if cost-sharing is not provided. Consistent with the siting law, a county cannot require a permit under its manure storage ordinance if it also requires a facility to obtain a permit under a siting ordinance. This rule also describes the requirements, mandated under the siting law, when local ordinances impose more stringent regulations.

The standards for manure storage ordinances have been updated to reflect changes in the management of manure, including the storage for non-manure wastes such as feed leachate and milking center waste, and revisions of applicable technical standards to reflect those changes. The rule also creates new oversight responsibilities for DATCP, allowing the department to mandate manure storage application forms for local use, or to conduct selective review of manure storage ordinances.

Regarding more stringent local regulation, this rule describes requirements imposed under the siting law to implement local ordinances with these additional provisions.

Standards for Cost-Shared Practices

This rule adds these general provisions that apply to all cost-shared practices:

- Expansion of the concept of voluntary use of updated technical standards, an option first adopted in ATCP 50 in 2007 in connection with the nutrient management performance standard. Under this procedure, a landowner or grant recipient may agree to use updated NRCS or DNR standards as a part of cost-shared project if certain conditions are satisfied (e.g., the newer standard is at least as protective of the environment as the referenced standard codified in the rule).
- A process that allows DATCP to require advance approval of a practice design in special cases before any county can receive a cost-share reimbursement for installation of the practice.

In addition to updating NRCS and other technical standards incorporated into this subchapter, this rule:

- Creates a standard for systems to control discharges of feed storage leachate to complement the cost-share standard that addresses discharges of milkhouse wastewater (see s. ATCP 50.77).
- Clarifies the responsibility of a landowner to maintain the storage capacity of the original storage facility built with DATCP cost-share funds, if animal units are added during the maintenance period of the manure storage cost-share contract.
- Establishes conditions for requiring nutrient management plans as part of a cost-shared project involving barnyard or feed storage runoff control.
- Recognizes the use of a limited set of practices such as access roads and streambank and shoreline protection in non-farm contexts, but imposes restrictions to prevent misuse of limited state cost-share funds (e.g., access roads cannot be used to pay for road building for public use).
- Separates cattle crossings from access roads as a cost-shared practice and creates a new standard for “stream crossing.”
- Eliminates heavy use area protection as a separate cost-shared practice and allows this practice only as a component of other practices such as barnyard runoff control systems.
- Gives more flexibility to provide cost-share funds for pesticide spill control structures without the requirement of a pesticide management plan in all cases.
- Better defines structural and bioengineering treatments that are cost-shared under the streambank or shoreline protection standard, and makes other changes to that standard.

Standards Incorporated by Reference

Pursuant to s. 227.21, Stats., DATCP has received permission from the attorney general to incorporate the following standards by reference in this rule:

- NRCS technical guide standards and related documentation.
- ASCE and other private sector-developed engineering practice standards.
- State agency (DNR, Department of Transportation) erosion control standards for construction sites and stormwater management.

- UW-Extension publications including milking center waste water management, rotational grazing, and soil and manure testing.
- NRCS standards for determining soil erosion (RUSLE 2, WEPS).

Many of the standards are available electronically. Copies of these standards will be on file with DATCP and the legislative reference bureau. DATCP has discontinued the practice of including key documents on standards as appendices and will utilize its website to indicate where documents may be obtained.

Waivers

Under current rule, DATCP may grant a waiver from any standard or requirement under this rule if DATCP finds that the waiver is necessary to achieve the objectives of this rule. The DATCP secretary must sign the waiver. DATCP may not waive a statutory requirement.

Land and Water Conservation Board

The land and water conservation board has reviewed this rule as required by s. 92.04(3) (a), Stats.

Summary of, and Comparison with, Existing or Proposed Federal statutes and Regulations

NRCS has adopted standards for conservation practices cost-shared by NRCS. Current DATCP rules incorporate many NRCS standards by reference. In most cases, the standards apply only to conservation practices cost-shared with DATCP funds. But in some cases (such as nutrient management), DATCP rules incorporate the NRCS standards as mandatory pollution control standards. Enforcement of these mandatory standards is generally contingent on cost-sharing (there are limited exceptions).

While NRCS sets national standards, standards vary, to some extent, among states. NRCS coordinates its Wisconsin standard-setting process with DATCP, DNR and others. For purposes of Wisconsin's soil and water conservation program, DATCP may incorporate NRCS standards as written or may modify the standards as appropriate. This rule modifies current DATCP rules that incorporate NRCS standards by reference. This rule incorporates updated NRCS standards, or modifies NRCS standards to make them more clear or workable in Wisconsin's soil and water conservation program, as appropriate. It allows landowners receiving cost-sharing to voluntarily take advantage of new NRCS standards not yet incorporated into rule, thereby ensuring that they get the most value for their investment in conservation practices.

NRCS certifies engineering practitioners who design, install or approve conservation engineering practices cost-shared by NRCS. DATCP certifies practitioners who perform similar functions under DATCP rules. As noted above, this rule makes changes to better match the state and federal programs, which ultimately will benefit the landowners who rely on technical services from engineering practitioners.

The United States Department of Agriculture administers a number of federal programs that offer voluntary conservation incentives to farmers. The Environmental Quality Incentives Program ("EQIP") is a key program offering cost-sharing for conservation improvements, including nutrient management plans, manure storage improvements and other conservation practices. As a result of confidentiality requirements, federal cost-sharing provided to landowners through this and other NRCS cost-share programs cannot be publicly disclosed. Without accurate historical data about past use of NRCS cost-sharing to implement state conservation standards, it is difficult to account for the role these funds may play in the future.

Other programs, such as the Conservation Reserve Program ("CRP") and the Conservation Reserve Enhancement Program ("CREP") also provide cost-sharing and other incentives for conservation practices. DATCP attempts to coordinate state programs for conservation funding with relevant federal programs.

Comparison with Rules in Adjacent States

This comparison examines how surrounding states are addressing issues related to the 2011 DNR standards, with particular focus on the implementation of such standards through farmland preservation activities. In general, the adjacent states do not use statewide performance standards specifically designed to address polluted runoff from agricultural sources. However, these states have various regulations and procedures in place to address many of the polluted runoff sources that these rule revisions address. All four states use the Phosphorus Index in some form but none use it in the same manner as NR 151 provides. For example, phosphorus management strategies in Michigan are implemented as part of the state's Generally Accepted Agricultural and Management Practices (GAAMPs). Wisconsin's approach differs from the programs in adjacent states in that it has more detail in its Phosphorus Index, is more quantitative and has more research to validate it. Also, in Wisconsin, pursuant to s. 281.16, Stats., cost-sharing must be made available to existing agricultural operations before the state may require compliance with the standards. Cost-sharing is often tied to compliance responsibilities in adjacent states, but there are instances where farmers must meet standards other than the Phosphorus Index as part of regulatory programs.

Illinois

Using a different framework and programming, Illinois implements several standards similar to those adopted in Wisconsin. In addition to implementing a Phosphorus Index for large livestock operations, Illinois encourages the equivalent of a tillage setback for croplands through a property tax incentive related to the construction of livestock waste management facilities. This incentive applies to the installation of vegetative filter strips in cropland that is surrounding a surface-water or groundwater conduit. Illinois law does not allow raw materials, by-products and products of livestock management facilities, including milkhouse waste, silage leachate, and other similar products to be discharged to waters of the state.

While Illinois has a statewide farmland preservation program in which landowners may restrict the use of their land to agricultural or related uses in exchange for tax credits, the program does not include conservation compliance requirements.

Iowa

Like Illinois, Iowa requires that nutrient management plans for livestock operations of 500 or more animal units be based on the Phosphorus Index. Iowa does not require a separation distance between tillage activities and waterbodies. Iowa prohibits discharges to waters of the state, polluting waters of the state and discharge to road ditches. Medium-sized livestock operations are required to install runoff controls to eliminate discharges of process wastewater into waters of the state. See Iowa's website at:

http://www.iowadnr.gov/portals/idnr/uploads/afo/fs_desncriteria_medcafo.pdf

While Iowa operates a county-based statewide farmland preservation program in which landowners may restrict the use of their land to agricultural or related uses in exchange for tax credits, the program does not include conservation compliance requirements.

Michigan

Michigan relies on GAAMPs [see *Generally Accepted Agricultural and Management Practices for Manure Management and Utilization* (January 2012)] to support the Michigan Agriculture Environmental Assurance Program ("MAEAP"), which includes a compliance verification process that ensures nuisance protection to farmers under Michigan's Right to Farm law. GAAMPs cover standards similar to those in Wisconsin, including standards for process wastewater and pasture management. These standards are implemented as part of the state's right to farm law and its complaint investigation program. The state assesses problems identified through complaints, and farmers must take corrective action to earn nuisance protection under the right to farm law.

Michigan does not require a separation distance between tillage activities and waterbodies. The state's regulatory requirements regarding process wastewater only apply to permitted concentrated animal feeding operations, but discharges from smaller farms are generally prohibited as a violation of water quality standards.

While Michigan has a statewide farmland preservation program in which landowners may restrict the use of their land to agricultural or related uses in exchange for tax credits, the program does not include conservation compliance requirements

Minnesota

Minnesota implements a variation of a tillage setback in limited settings, requiring a 16.5 foot (one rod) grass strip along certain public drainage ditches as well as vegetated strips, restored wetlands, and other voluntary set-aside lands through federal, state and local programs. For process wastewater, Minnesota rules place a limit of less than 25 mg/l BOD5 (biological oxygen demand) that can be released to surface water and, if released to a leach field, the threshold is

less than 200 mg/l BOD5. State and local officials work with pasture owners to prevent and abate water quality violations (Minn. R. ch. 7050 and 7060) that may be created by sediment or nutrient runoff from poorly managed pastures.

Under its feedlot program, Minnesota imposes mandatory requirements on about 25,000 registered feedlots. This program requires feedlot owners, ranging in size from small farms to large-scale commercial livestock operations, to “register with the MPCA, and meet the requirements for runoff discharge, manure application and storage, and processed wastewater.”

While Minnesota has a statewide farmland preservation program in which landowners may restrict the use of their land to agricultural or related uses in exchange for tax credits, the program does not include conservation compliance requirements.

Summary of Factual Data and Analytical Methodologies

To develop this rule, DATCP participated in the DNR advisory group convened as part of the revision of NR 151, worked with DNR to achieve a revision of NR 151 consistent with the statutory framework and the interests of regulated groups and other stakeholders, informally worked with interest groups including organizations representing farm groups, environmental groups, and government entities such as county land and water conservation departments, conducted listening sessions with affected parties to secure input, and prepared an assessment of the business impacts using DNR’s assessment and a methodology similar to the one used for the 2002 nonpoint rule revision.

Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of an Economic Impact Analysis

In preparing its analysis and supporting documentation, the department consulted with stakeholder groups, reviewed rule documents developed by DNR related to the adoption of the 2011 DNR standards including revised fiscal estimate and final rule order, and estimated costs using a methodology similar to the one used for the 2002 nonpoint rule revision.

Effects on Small Business

Most impacts of this rule will be on farmers, a great majority of whom qualify as “small businesses.” The analysis of the impacts on farms takes into consideration the following factors:

- The proposed rule does not add standards for farms (which were created by DNR in 2011), but focuses on implementation of DNR’s standards. DNR’s analysis of the 2011 standards was consulted.
- In its implementation of the 2011 DNR standards, this rule includes measures intended to minimize the financial impacts on farmers, including accommodations to limit the

burdens of nutrient management planning for pastures, and limitations on increasing the tillable setback over 5 feet.

- Most farmers will be insulated from some of the costs of implementation by the state's cost-share requirement and the limited state funding available to provide cost-sharing.
- For farmers receiving farmland preservation program tax credits, this rule provides farmers flexibility to minimize the financial impacts related to compliance (which range from \$8 to \$12 million state-wide), including a delay in the effective date for compliance with the 2011 DNR standards, the use of performance schedules, pursuit of cost-sharing for which they are eligible, use of a tax credit to offset some implementation costs, or if needed, withdrawal from the farmland preservation program to avoid unmanageable costs.

The proposed rule changes will have small, but positive impacts on businesses other than farmers. Those businesses include nutrient management planners, soil testing laboratories, farm supply organizations, conservation engineering practitioners, and contractors installing farm conservation practices. The *Final Regulatory Flexibility Analysis*, which will be filed with this rule, provides a more complete analysis of this issue.

DATCP Contact

Questions and comments related to this rule may be directed to:

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1 **SECTION 1.** ATPC 50.01 (2m) and (Note) are created to read:

2 ATPC 50.01 (2m) "Contaminated runoff" means drainage that has come through or
3 across a feed storage or manure storage area. "Contaminated runoff" includes the liquid and any
4 sediment, manure, feed or other material carried in the liquid.

5 **Note:** "Contaminated runoff" contains lower concentrations of contaminants than
6 leachate from feed or manure.

7
8 **SECTION 2.** ATPC 50.01 (11) is repealed.

9 **SECTION 3.** ATPC 50.01 (15m) and (Note) are created to read:

ATCP 50.01 (15m) "Leachate" means the concentrated liquid which has percolated through or drained from animal feed or manure storage areas.

Note: "Leachate" contains much higher concentrations of contaminants than contaminated runoff.

SECTION 4. ATCP 50.01 (17) and (18) (a) are amended to read:

ATCP 50.01 (17) "Local governmental unit," as used in s. ATCP 50.60, has the meaning given in s. 92.15 (1) (b), Stats., and includes a county, town, city, village, lake district and county drainage board.

(18) (a) Soil and water conservation standards that a county land conservation committee adopts under s. ~~92.105~~92.07(2), Stats.

SECTION 5. ATCP 50.01 (18) (a) (Note) is repealed.

SECTION 6. ATCP 50.01 (18) (b) and (c), (20) and (27) (Note) are amended to read:

ATCP 50.01 (18) (b) An ordinance or regulation that a county adopts under s. 59.69, 59.692, 92.07 (2), 92.11, 92.15, 92.16 ~~or~~, 92.17 or 93.90, Stats., or under other county authority.

(c) An ordinance or regulation that a town, city or village adopts under s. 92.11, 92.15, 92.16 ~~or~~, 92.17 or 93.90, Stats., or under other town, city or village authority.

(20) "Manure" means livestock excreta. "Manure" includes livestock the following when intermingled with excreta in normal farming operations: debris including bedding, water, soil, hair, and feathers; processing derivatives including separated sand, separated manure solids, precipitated manure sludges, supernatants, digested liquids, composted biosolids and process water; and other debris that becomes intermingled with livestock excreta in normal manure handling operations runoff collected from barnyards, animal lots and feed storage areas.

(27) **Note:** Copies of the NRCS technical guide are on file with the department and the legislative reference bureau. Copies of individual standards contained in the NRCS technical guide may be obtained from ~~the~~ a county land conservation

committee or from department, an NRCS field office. This chapter incorporates, by reference, various NRCS technical guide standards. See *Appendix G*, the national NRCS website at: <http://www.nrcs.usda.gov/>, or Wisconsin NRCS website at: <http://www.wi.nrcs.usda.gov/>.

SECTION 7. ATPC 50.01 (29m) is created to read:

ATPC 50.01 (29m) "Pasture" has the meaning given in s. NR 151.015 (15m).

SECTION 8. ATPC 50.01 (31) (a) and (b) and (33) are amended to read:

ATPC 50.01 (31) (a) Except as provided in par. (b), the release that was in effect on November 14, 2006 the effective date of this section...[LRB inserts date].

(b) For purposes of a compliance determination under ch. NR 151 or this chapter made prior to November 14, 2006 the effective date of this section...[LRB inserts date], the release that was in effect on the date of the compliance determination.

(33) "State regulation" means ~~chs. ch.~~ 88, 91, 92, 93, 281 ~~and~~ 283, Stats., and rules promulgated by the department or DNR under ch. 88, 91, 92, 93, 281 or 283, Stats.

SECTION 9. ATPC 50.04 (1) is amended to read:

ATPC 50.04 (1) NONPOINT SOURCE POLLUTION CONTROL. A landowner shall implement conservation practices that achieve compliance with DNR performance standards under ss. NR 151.02 to 151.08, in effect on the effective date of this section...[LRB inserts date].

SECTION 10. ATPC 50.04 (1) (Note) is created to read:

ATPC 50.04 (1) **Note:** Landowners who claim farmland preservation tax credits must comply with conservation standards as required under s. 91.80, Stats.

SECTION 11. ATPC 50.04 (2) and (Note) and (3) (a) are amended to read:

ATPC 50.04 (2) ~~CROPLAND SOIL~~ SOIL EROSION CONTROL. A landowner shall manage ~~croplands~~, all fields including pastures, and ~~cropping~~ related field practices so that soil erosion

1 rates on cropped and pastured soils, ~~determined according to RUSLE 2 equation~~, do not exceed
2 T-value.

3 **Note:** See s. 92.025 (1), Stats., and s. NR 151.02. Soil erosion includes erosion caused
4 by wind or water. For most soils, "T-value" is equivalent to 2 to 5 tons of soil
5 loss per acre per year.

6
7 The Sheet and rill soil erosion from water is calculated according to the RUSLE 2
8 equation is, published by NRCS, and is available from NRCS. Wind erosion is
9 calculated according to the NRCS Wind Erosion Prediction System (WEPS)
10 model. Copies of RUSLE 2 and the NRCS WEPS model are on file with the
11 department and the legislative reference bureau. Copies of both models may also
12 be obtained from the NRCS website at: <http://www.wi.nrcs.usda.gov/technical/>.

13
14 (3) (a) A landowner shall have and follow an annual nutrient management plan when
15 applying nutrients to any field, including pastures, after the date specified in par. (h). A nutrient
16 management plan shall comply with this subsection.

17 **SECTION 12.** ATPC 50.04 (3) (a) (Note) is created to read:

18 ATPC 50.04 (3) (a) **Note:** A nutrient management plan developed in accordance with s.
19 ATPC 50.04 (3) that includes a phosphorus index (PI) calculation value can be
20 used to demonstrate compliance with s. NR 151.04. Additional guidance related
21 to the PI can be found in the notes to s. NR 151.04 (2) (b).

22
23 **SECTION 13.** ATPC 50.04 (3) (b) is amended to read:

24 ATPC 50.04 (3) (b) The plan shall include every field on which ~~the landowner~~
25 mechanically applies nutrients are applied, including pastures, and pastures stocked at an average
26 rate of more than one animal unit per acre during the grazing season. Pastures are not required to
27 be included in the plan if all of the following requirements are met:

28 1. The pastures are stocked at an average stocking rate of one animal unit per acre or less
29 at all times during the grazing season.

30 2. The pastures do not receive mechanical applications of nutrients.

31 **SECTION 14.** ATPC 50.04 (3) (b) (Note) is created to read:

1 ATCP 50.04 (3) (b) **Note:** The grazing season includes the months of the year when
2 pasture vegetation is actively growing.

3
4 **SECTION 15.** ATCP 50.04 (3) (d) is amended to read:

5 ATCP 50.04 (3) (d) The plan shall be based on soil nutrient tests conducted at a
6 laboratory certified under s. ATCP 50.50 to conduct those tests. Soil tests are not required on
7 pastures that do not receive mechanical applications of nutrients if either of the following
8 applies:

9 1. The pastures are stocked at an average stocking rate of one animal unit per acre or less
10 at all times during the grazing season.

11 2. The pastures are stocked at an average stocking rate of more than one animal unit per
12 acre during the grazing season, and a nutrient management plan for the pastures complies with s.
13 NR 151.04 (2), using an assumed soil test phosphorus level of 150 parts per million and organic
14 matter content of 6%.

15 **SECTION 16.** ATCP 50.04 (3) (de) is created to read:

16 ATCP 50.04 (3) (de) A landowner may be required to provide documentation to the
17 county land conservation committee that animal stocking rate and soil test values for pastures do
18 not exceed the levels in par. (b) 1. and (d) 2., respectively.

19 **SECTION 17.** ATCP 50.04 (3) (dm) 1. (Note), (e) (Note), (f) (intro.) and 4. (Note)
20 are amended to read:

21 ATCP 50.04 (3) (dm) 1. **Note:** The NRCS technical guide standard 590 (September,
22 2005) and Wisconsin conservation planning technical note WI-1 is are on file
23 with the department and the legislative reference bureau. Copies are available
24 from your a county land conservation office or the following web address:
25 <http://darep.state.wi.us/arm/agriculture/land-water/conservation/nutrient->
26 [mngmnt/planning.jsp](http://darep.state.wi.us/arm/agriculture/land-water/conservation/nutrient-mngmnt/planning.jsp) The NRCS technical guide standard 590 (September, 2005)
27 is reproduced, without the companion technical note, in Appendix D department,
28 a NRCS field office, the national NRCS website at: <http://www.wi.nrcs.usda.gov>.

the Wisconsin NRCS website at: <http://wi.nrcs.usda.gov/>, or the department website at: <http://datcp.wi.gov/ATCP50>.

(e) **Note:** ~~The A person may obtain a checklist in Appendix C may be used to gather information for a nutrient management plan. NRCS technical guide nutrient management standard 590 (September, 2005) is reproduced in Appendix D. The Wisconsin conservation planning technical note WI-1 (September, 2007) is not reproduced in Appendix D but is on file with the department and the legislative reference bureau. Copies are available from your county land conservation office or the following web address: <http://www.datcp.state.wi.us/arm/agriculture/land-water/conservation/nutrient-mngmt/planning.jsp> by visiting the department's website at: <http://datcp.wi.gov/ATCP50>. To obtain a copy of Wisconsin conservation planning technical note WI-1 (November 2008), see par. (dm) 1. (Note).~~

(f) (intro.) The plan may not recommend nutrient applications that exceed the amounts required to achieve applicable crop fertility levels recommended by the University of Wisconsin-Extension in the ~~1998~~2006 edition of ~~Soil Test Recommendations~~Nutrient Application Guidelines for Field, Vegetable and Fruit Crops, UWEX publication A-~~2809~~A2809, or in the latest subsequent edition of that publication if preferred by the landowner, unless the nutrient management planner can show that one or more of the following circumstances justifies the recommended application:

4. Note: ~~Appendix B contains a convenient summary of The 2006 and subsequent editions of the UWEX publication A-2809A2809, for selected crops. You may obtain the complete publication and the summary are available from your a county extension agent. The complete publication is 2006 and 2012 editions are also on file with the department and the legislative reference bureau. The latest edition of A2809 is available from the UWEX website at: <http://learningstore.uwex.edu/>. Copies are also available from your county land conservation office or the following web address department website at: <http://datcp.state.wi.us/arm/agriculture/land-water/conservation/nutrient-mngmt/planning.jsp> <http://datcp.wi.gov/ATCP50>.~~

SECTION 18. ATCP 50.04 (3)(gm) is created to read:

ATCP 50.04 (3) (gm) A landowner or nutrient management planner qualified under s.

ATCP 50.48(2) shall annually review a nutrient management plan to determine whether the plan

1 accurately reflects the planned cropping, tolerable soil loss, nutrient application rates and
2 application methods. The plan shall be updated, by a nutrient management planner qualified
3 under s. ATCP 50.48, when necessary to reflect changes in those planned activities.

4 **SECTION 19.** ATCP 50.04 (3) (h) (intro.) is amended to read:

5 ATCP 50.04 (3) (h) (intro.) Paragraph (a) first applies on the following dates for the
6 following nonpasture lands:

7 **SECTION 20.** ATCP 50.04 (4) and (Note) are created to read:

8 ATCP 50.04 (4) TILLAGE SETBACK. (a) A landowner shall manage cropland to achieve
9 compliance with the DNR performance standard for tillage setback under s. NR 151.03.

10 (b) A landowner is not required to establish a tillage setback distance greater than 5 feet
11 unless all of the following conditions are met:

12 1. The 5-foot setback distance is increased by the smallest increment necessary to
13 achieve the purposes of s. NR 151.03, but in no case greater than a total setback distance of 20
14 feet.

15 2. In determining whether to increase the setback distance, county or other conservation
16 professionals shall do all of the following:

17 a. Consider bank materials, height, slope, cause of bank erosion, soil type and other
18 factors that affect bank integrity.

19 b. Use best professional judgment, based on the latest technical standards and practices
20 required under this chapter.

21 c. Follow a consistent approach in making determinations for increased setback distances
22 by consulting with NRCS or department engineering specialists.

d. Provide the landowner with a written statement documenting the findings and conclusions in support of the increased setback distance.

Note: Conservation practices such as critical area stabilization, grade stabilization and shoreland protection should be installed if necessary to stabilize the bank and protect its integrity. Determinations regarding compliance with this standard may be appealed as authorized under s. 227.42, Stats., or other provisions of law. Landowners may achieve compliance with this standard by enrolling riparian land in the CREP program or other federal set-aside programs.

SECTION 21. ATPC 50.08 (1) (intro.), (a) (Note), (2) (Note) and (5) (a) (Note) are amended to read:

ATPC 50.08 (1) (intro.) A landowner engaged in agricultural practices in this state is not required to do any of the following, under s. ATPC 50.04, unless the landowner receives a bona fide offer of cost-sharing:

(a) **Note:** Under DNR rules, a landowner is normally entitled to cost-sharing if the landowner is required to discontinue or modify cropping practices on “existing cropland” in order to comply with a DNR performance standard. Other cropland must comply with relevant DNR performance standards, regardless of the availability of cost-sharing. Under DNR rules:

- Land qualifies as “existing cropland” if it was being cropped on the effective date of the relevant DNR performance standard, and has never complied with that performance standard since that date.
- If cropland *complies* with a DNR performance standard after that standard takes effect, it no longer qualifies as “existing cropland” for cost-share purposes under that performance standard. If the cropland later falls out of compliance with the performance standard, the landowner must restore compliance regardless of the availability of cost-sharing.
- Land not cropped on the effective date of a DNR performance standard, but returned to cropping at a later date, may qualify as “existing cropland” if it is returned to cropping within 10 years after cropping was halted.
- Cropland enrolled in a federal conservation program on October 1, 2002 qualifies as “existing cropland” when it comes out of the federal program unless the cropland is re-enrolled.

A landowner may be *eligible* for cost-sharing, even if the landowner is not *entitled* to cost-sharing under par. (a). A county has considerable discretion in its use of DATCP cost-share funds, subject to this chapter. See subch. V of this chapter.

1
2 (2) **Note:** See ss. 92.07 (2), 92.15 (4) and 281.16 (3) (e), Stats. Subsection (1) requires a
3 bona fide offer of cost-sharing, not necessarily an acceptance. A county may
4 impose a reasonable deadline by which a landowner must accept or reject the
5 county's bona fide ~~cost-sharing~~cost-share offer under sub. (1). See s. ATCP 50.54
6 (2) related to cost-sharing for conservation practices required under a county or
7 local ordinance.

8
9 The minimum cost-share requirement under subs. (1) and (2) does *not* apply if a
10 landowner *voluntarily* installs a cost-shared practice. In a voluntary transaction,
11 the county is free to negotiate a grant amount with a landowner (up to the
12 *maximum* amounts provided in s. ATCP 50.42). But if a county *requires* a
13 landowner to install a conservation practice, the county must comply with
14 applicable cost-share requirements under subs. (1) and (2). The cost-share grant
15 may come from one or more sources, as provided under sub. (7).

16
17 If the practice is not being installed to achieve compliance with an agricultural
18 performance standard, the minimum cost-share requirement also does *not* apply.
19 See s. ATCP 50.42 (1).

20
21 (5) (a) **Note:** For example, if a county has already paid a landowner to install and
22 maintain a manure storage system for at least 10 years (see s. ATCP 50.62 (5) (f)),
23 the county may require the landowner to maintain the facility in subsequent years
24 without further cost-sharing. The county has the burden of showing that it has
25 already paid the landowner.

26
27 The rule is different if the county requires a landowner to take more than ½ acre
28 of land out of agricultural production in order to install or maintain a conservation
29 practice. Even if a county has *already paid* a landowner to install and maintain
30 that conservation practice for at least 10 years, the county must *continue* to
31 provide cost-share funds for lost production if the county *requires* the landowner
32 to keep the land out of production in subsequent years. Land is not taken "out of
33 agricultural production", for ~~cost-sharing~~cost-share purposes, if the landowner is
34 free to use it for pasture, hay production *and* cropping subject to residue
35 management (see s. ATCP 50.01 (14)).

36
37 **SECTION 22.** ATCP 50.10 (1) (b) and (Note) are amended to read:

38 ATCP 50.10 (1) (b) ~~County soil and water conservation standards, and a~~ A program to
39 implement ~~those~~ soil and water conservation standards.

40 **Note:** A county's land and water resource management plan under s. ATCP 50.12 should
41 identify the county's strategy to implement the farm conservation practices
42 required under s. ATCP 50.04. See Under s. ATCP 50.16 ~~related to, a county is~~
43 required to monitor and ensure compliance with conservation standards for lands

covered by the farmland preservation program under ch. 91, Stats. See s. ATP 50.14 and subch. VII related to county ordinances.

SECTION 23. ATP 50.12 (2) (a), (b) (Note), (c), (f) (Note), (g), (i) and (j) and (3) (c)

(Note) are amended to read:

ATP 50.12 (2) (a) Water quality and soil erosion conditions throughout the county, including identification of the causes of water quality impairment and pollutant sources. The plan shall include water quality assessments for each watershed in the county available from DNR, if any.

(b) **Note:** See state rules under chs. ATP 48, ATP 50, ~~NR 120~~, NR 151 and NR 243.

(c) Water quality objectives for each ~~water basin, priority watershed as defined in s. 281.65 (2) (c), Stats., and priority lake as defined in s. 281.65 (2) (be), Stats.~~ watershed, including any available pollutant load reduction targets, consistent with conditions identified in par. (a).

The county shall consult with DNR to determine water quality objectives ~~in consultation with DNR and to identify pollutant load reduction targets.~~

(f) **Note:** The identification of priority farms may vary between counties, depending on local conditions, strategies and information. A county should focus on identifying or working with the following farms, or other categories of farms that the county identifies in its plan:

- ~~• Critical sites that DNR designates under s. 281.65 (4) (g) 8. am., Stats.~~
- Farms subject to a DNR notice of intent under s. 281.20, Stats., or notice of discharge under ch. 283, Stats.
- Farms located in watersheds draining to waters that DNR has listed pursuant to 33 USC 1313. This is also known as the "303(d) list of impaired waters."
- Farms that have large numbers of livestock, or significant problems with manure management.
- Farms making clearly excessive nutrient applications.
- Farms with clearly excessive rates of cropland erosion.

(g) County strategies to encourage voluntary implementation of conservation practices under s. ATP 50.04. ~~County strategies may include~~ A county shall estimate the amount of

1 information and education, cost-sharing, and other financial assistance and technical assistance
2 and other strategies needed to implement its plan.

3 (i) The county's multi-year workplan to implement the farm conservation practices under
4 s. ATCP 50.04, and achieve compliance with performance standards under ch. NR 151. The
5 plan shall identify priorities, benchmarks for performance and expected costs, including an
6 estimate of costs to implement conservation practices to achieve the objectives identified in par.
7 (c).

8 (j) ~~How~~ The measurable annual and multi-year benchmarks the county will utilize to
9 periodically monitor and measure its progress in meeting performance targets and achieving plan
10 goals and objectives under the workplan in par. (i).

11 (3) (c) **Note:** The county land conservation committee should normally consult with the
12 appropriate DNR ~~basin team~~ staff to obtain needed planning information,
13 effectively address resource management concerns, and ensure that its plan
14 incorporates elements that satisfy planning requirements under section 319 of the
15 Clean Water Act.
16

17 **SECTION 24.** ATCP 50.12 (2) (jm) is created to read:

18 ATCP 50.12 (2) (jm) How a county will meet its responsibilities for monitoring
19 conservation compliance of landowners claiming farmland preservation tax credits.

20 **SECTION 25.** ATCP 50.16 (title), (1), (2), (3), (4) and (5) are repealed and recreated to
21 read:

22 **ATCP 50.16 Farmland preservation program; conservation standards compliance.**

23 (1) COMPLIANCE WITH STANDARDS REQUIRED. (a) Except as provided in par. (d) and sub. (2), a
24 landowner claiming farmland preservation tax credits shall comply with the standards and
25 practices in s. ATCP 50.04.

26 **Note:** The soil and water conservation standards are promulgated by the department
27 under ss. 92.05 (3) (c) and (k), 92.14 (8), and 281.16 (3) (b) and (c), Stats. See

1 also s. 91.80, Stats. A county land conservation committee or its designee
2 determines whether a landowner is in compliance with conservation standards. A
3 determination of compliance is one component of the requirements a landowner
4 must satisfy to claim a farmland preservation tax credit. Landowners are
5 responsible to determine whether they meet all the eligibility requirements to
6 claim the benefits of compliance.
7

8 (b) In determining landowner compliance under this section, the land conservation
9 committee shall base its determination on all of the following:

10 1. Whether the entire farm operation owned by the landowner is in compliance with all
11 the applicable conservation standards.

12 2. Whether a review of available documentation at the county demonstrates the entire
13 farm operation owned by the landowner has no significant discharge from an animal lot, feed
14 storage, manure storage, or other livestock structure on the farm.

15 3. Whether a review of available documentation at the county demonstrates the entire
16 farm operation owned by the landowner has implemented a nutrient management plan in
17 compliance with the nutrient management standard in s. ATP 50.04 (3) for all land where a
18 plan is required on the farm.

19 (c) Once determined to be in compliance with the nutrient management standard in s.
20 ATP 50.04 (3), a landowner shall remain in compliance with the nutrient management standard
21 on the entire farm operation owned by the landowner. If a landowner increases acres of cropland
22 or pasture by acquiring new land or converting acres to these uses, the landowner remains in
23 compliance by updating the farm's nutrient management plan within one year to incorporate the
24 additional cropland or pasture acres.

25 (d) A landowner claiming farmland preservation tax credits shall comply with the
26 pasture requirement in ss. NR 151.02, 151.03, 151.04 and 151.055, beginning on January 1,
27 2016.

1 (2) EXCEPTIONS; FARMLAND PRESERVATION AGREEMENTS. (a) Except as required under
2 par. (b), sub. (1) does not apply to landowners under a farmland preservation agreement entered
3 into prior to July 1, 2009. Landowners with these agreements claiming farmland preservation
4 tax credits under ss. 71.57 to 71.61, Stats., shall comply with the standards, specified in the
5 agreement, on the land specified in the agreement, as required in ss. 92.104 and 92.105, 2007
6 Stats.

7 (b) Landowners who entered into, or modified, a farmland preservation agreement
8 between July 1, 2009, and the effective date of this section ... [LRB inserts date], pursuant to the
9 provisions in s. 91.60 (1) or (3) (c), Stats., shall comply with the soil and water conservation
10 standards in effect at the time the agreement was entered into or modified.

11 (c) Landowners who enter into, or modify, a farmland preservation agreement after the
12 effective date of this section ... [LRB inserts date] shall comply with the soil and water
13 conservation standards in effect at the time the agreement was entered into or modified, and shall
14 be required, under the terms of that agreement, to comply with the pasture requirement in s. NR
15 151.02, and ss. NR 151.03, 151.04 and 151.055 beginning January 1, 2016.

16 (3) PERFORMANCE SCHEDULE. (a) A county land conservation committee may enter into
17 a written performance schedule with a landowner if all of the following apply:

18 1. The performance schedule, including amendments or extensions, does not allow the
19 landowner more than 5 years, from the time the landowner is informed of their compliance
20 obligations, to achieve compliance with all applicable conservation standards.

21 2. The landowner agrees in writing to specific farm conservation practices needed to
22 achieve compliance with the standards required under sub. (1) according to a specific schedule
23 for completing the work.

1 3. Every performance schedule shall include a notice that landowners are responsible for
2 determining their eligibility to receive a farmland preservation tax credit independent of the
3 landowner's commitment to implement the conservation practices set forth in the performance
4 schedule.

5 **Note:** While a performance schedule may establish a landowner's compliance under this
6 section, a landowner may not meet other program requirements necessary to
7 receive benefits such as farmland preservation tax credits. These other program
8 requirements may include residency, minimum farm income, and continuity of
9 claiming farmland preservation program tax credits.
10

11 4. The land conservation committee approves the performance schedule, including the
12 proposed practices and the time allowed to achieve compliance. The land conservation
13 committee may establish shorter periods to achieve compliance than the 5 year maximum
14 allowed under this subsection.

15 **Note:** A county should exercise sound judgment at critical junctures in its monitoring of a
16 farmer's conservation compliance, including its decision on the length of a
17 performance schedule, and its decision on how and when to respond to changes in
18 farmer compliance with applicable standards. The county may consider the
19 following in exercising its discretion: extenuating circumstances, such as adverse
20 weather conditions, that may affect a landowner's ability to comply; the nature
21 and seriousness of the landowner's non-compliance; the degree to which the
22 landowner has cooperated or taken actions to address concerns; the availability of
23 technical or other assistance; and the consistency of treatment among farmers in
24 the area. Before taking any compliance action, a county shall afford the
25 landowner notice and a reasonable opportunity to demonstrate compliance.
26

27 (b) A landowner demonstrates compliance with the conservation standards under sub. (1)
28 if the landowner does either of the following:

29 1. Complies with all soil and water conservation standards as required under s. 91.80,
30 Stats.

31 2. Implements a performance schedule that will achieve full compliance with those
32 standards within the period authorized under par. (a).

1 **Note:** A landowner is implementing a performance schedule if the landowner is making
2 reasonable progress in installing farm conservation practices, and taking other
3 appropriate actions in the time frame identified in the schedule as necessary to
4 achieve compliance.

5
6 (4) CERTIFICATE OF COMPLIANCE. (a) The county land conservation committee shall
7 issue a certificate of compliance to a landowner claiming tax credits under s. 71.613, Stats., if the
8 landowner meets the soil and water conservation standards as required by s. 91.80, Stats., and
9 this section. The certificate shall be issued on a form approved by the department.

10 **Note:** The county may obtain approval of its form by contacting the department at:
11 DATCPWorkingLands@wisconsin.gov.

12 The county may also issue certificates of compliance with soil and water
13 conservation standards in other situations if authorized by law.

14
15
16 (b) A certificate establishing a landowner's compliance with s. 91.80, Stats., and this
17 section remains in effect and valid until the county land conservation committee issues a notice
18 of noncompliance under sub. (6).

19 **Note:** A landowner who is issued a certificate of compliance may fall out of compliance
20 with a standard or fail to meet a standard applicable after the certification was
21 initially issued. A county, after reviewing the changes in the landowner's
22 compliance status, may consider issuing a notice of non-compliance. See Note
23 under sub. (3) (a) 4.

24
25 (c) A certificate of compliance may be amended or modified to reflect changes in a
26 landowner's status.

27 (5) MONITORING COMPLIANCE. (a) A county land conservation committee shall monitor
28 a landowner's compliance with applicable conservation standards promulgated by the
29 department under ss. 92.05 (3) (c) and (k), 92.14 (8) and 281.16 (3) (b) and (c), Stats.

30 (b) A county land conservation committee shall inspect at least once every 4 years each
31 farm for which the owner claims farmland preservation tax credits. At a minimum, an inspection
32 shall include all of the following:

1 1. A site visit or other reliable assessment method to determine whether the entire farm
2 owned by the landowner has significant discharges from an animal lot, feed storage, manure
3 storage, or other livestock structure on the farm.

4 2. A review of the owner's records to determine whether the farmer is implementing a
5 nutrient management plan in compliance with s. ATCP 50.04 (2) and (3).

6 (c) A county land conservation committee may conduct other activities the committee
7 deems appropriate for monitoring compliance, including any of the following:

8 1. A county land conservation committee may ask a landowner to certify, on an annual
9 or less frequent basis, that the landowner is complying with the applicable conservation
10 standards under sub. (1) or (2) and any performance schedule under sub. (3). A landowner shall
11 certify compliance on a form provided by the committee.

12 2. A county land conservation committee may inspect farm sites and review documents
13 and records to determine compliance with applicable land and water conservation standards.

14 **Note:** For example, farm records on nutrient management may include various items
15 showing compliance such as current nutrient management checklists, soil test
16 results conducted by a department-certified laboratory within the last 4 years,
17 nutrient application restriction maps, nutrient applications planned over the
18 rotation schedule, and documentation of no visible signs of gully erosion.

19
20 (d) A land conservation committee shall maintain adequate documentation of county
21 monitoring efforts and inspection activities, on a form or set of forms provided by the land
22 conservation committee, to enable the department to perform the review required under s. 91.82
23 (1) (d), Stats., of the county land conservation committee's monitoring required under this
24 subsection.

25 **Note:** This subsection describes the minimum documentation that a county must
26 maintain regarding farms subject to monitoring requirements and is intended to
27 facilitate department monitoring of the counties. Counties are encouraged to

1 supplement documentation using their own systems including geographic
2 information systems tracking.

3
4 **SECTION 26.** ATCP 50.16 (6) (a) 1. and 2. are amended to read:

5 ATCP 50.16 (6) (a) 1. Failed to comply with applicable standards under sub. (1) or (2).

6 2. Failed to comply with a ~~farm conservation plan~~ performance schedule under sub.

7 ~~(4)~~(3).

8 **SECTION 27.** ATCP 50.16 (6) (a) 5. and (Note) are created to read:

9 ATCP 50.16 (6) (a) 5. Stated an intent to voluntarily refrain from collecting tax credits
10 under subch. IX of ch. 71, Stats., and to waive the right to a hearing and farm inspection.

11 **Note:** Landowners with a farmland preservation agreement claiming the farmland
12 preservation tax credits under ss. 71.57 to 71.61, Stats., are required, under the
13 terms of that agreement, to comply with the applicable land and water
14 conservation standards.

15
16 **SECTION 28.** ATCP 50.16 (6) (b) 1. is amended to read:

17 ATCP 50.16 (6) (b) 1. The nature of the violation, ~~and a deadline date for curing the~~
18 ~~violation.~~

19 **SECTION 29.** ATCP 50.16 (6) (b) 3. (Note) is created to read:

20 ATCP 50.16 (6) (b) 3. **Note:** A county should exercise sound judgment in deciding
21 whether to take compliance action under par. (b). See sub. (3) (a) 4. (Note).

22
23 **SECTION 30.** ATCP 50.16 (6) (c) (intro.) and 2., and (d) are amended to read:

24 ATCP 50.16 (6) (c) (intro.) ~~If a landowner receiving a notice under par. (a) fails to cure~~
25 ~~the violation by the deadline date specified in the notice, the~~ The county land conservation
26 committee shall issue a copy of ~~the a~~ notice under par. (a) to all of the following:

27 2. The county planning and zoning committee if the land is covered by ~~an exclusive~~
28 ~~agricultural~~ a farmland preservation zoning ordinance.

(d) A county land conservation committee may, at any time, withdraw a notice of noncompliance issued under par. (a). The committee shall issue a notice of withdrawal on a form approved by the department. The committee shall give notice of the withdrawal to any agency under par. (c) that received a copy of the notice of noncompliance.

SECTION 31. ATPCP 50.16 (6) (d) (Note) is created to read:

ATCP 50.16 (6) (d) **Note:** The county may obtain a copy of the notice of noncompliance by contacting the department at: <http://datcp.wi.gov/ATCP50> or calling (608) 224-4622. The county may obtain approval of its notice of withdrawal of noncompliance by contacting the department at: DATCPWorkingLands@wisconsin.gov or by calling (608) 224-4622.

SECTION 32. ATPCP 50.18 (1) (b) is amended to read:

ATCP 50.18 (1) (b) The county's progress toward the objectives identified in the county land and water resource management plan under s. ATPCP 50.12, including whether the county's annual and multi-year benchmarks have been met. The report shall identify key areas of improvement, key compliance activities and key remaining problem areas.

SECTION 33. ATPCP 50.18 (1) (b) (Note) is created to read:

ATCP 50.18 (1) (b) **Note:** Section ATPCP 50.12(2)(j) and s. 92.10(6)(a)6., Stats., require the county to have a system to monitor the progress in achieving the performance targets and outcomes stated in its plan.

SECTION 34. ATPCP 50.22 (5) and (Note) are created to read:

ATCP 50.22 (5) Except as provided in this subchapter, retain originals of documents and forms submitted to the department, and other records related to the grant award and its administration including subcontracts and receipts, for a minimum of 3 years after the end of the year of the grant award.

Note: See s. ATPCP 50.34 (7) for additional guidance.

SECTION 35. ATPCP 50.26 (2) (a) is amended to read:

1 ATCP 50.26 (2) (a) The activities for which the county seeks funding. These may include
2 activities under this chapter, ch. 91, Stats., and s. 93.90, Stats., CREP program activities, and
3 ~~priority watershed activities previously funded under ch. NR 120 and projects funded by DNR~~
4 under ss. 281.65 and 281.66, Stats.

5 **SECTION 36.** ATCP 50.26 (2) (a) (Note) is repealed and recreated to read:

6 ATCP 50.26 (2) (a) **Note:** The department establishes priorities for funding based on the
7 criteria in s. ATCP 50.30.

8
9 **SECTION 37.** ATCP 50.28 (1) (e) and (Note) are amended to read:

10 ATCP 50.28 (1) (e) The amount allocated to each ~~non-county~~ grant recipient under s.
11 92.14 (10), Stats., if any, and an explanation for each allocation. ~~A person applying for a grant~~
12 ~~under s. 92.14 (10), Stats., shall file a written grant application by April 15 of the year preceeding~~
13 ~~the year for which the department awards the grant. The grant application shall include a~~
14 ~~proposed budget and supporting documentation. The department may require a grant applicant~~
15 ~~to apply on a form provided by the department.~~

16 **Note:** The department normally awards grants under this chapter only to counties. But
17 under s. 92.14 (10), Stats., the department may also award grants to other persons
18 for information, education, training and other services related to the
19 administration of this chapter. See s. ATCP 50.35 (2) for the application process.
20

21 **SECTION 38.** ATCP 50.28 (5) (a) 1. is renumbered ATCP 50.28 (5) (a) 1. a.

22 **SECTION 39.** ATCP 50.28 (5) (a) 1. a. (Note) is renumbered ATCP 50.28 (5) (a) 1. b.

23 (Note) and amended to read:

24 ATCP 50.28 (5) (a) 1. b. **Note:** The department will normally grant funding extensions
25 under subd. 1. by April 30 of each grant year, based on ~~county~~ extension requests
26 filed by December 31 of the preceding grant year. See s. ATCP 50.34 (6).
27 Staffing grants may not be extended into the next calendar year.
28

29 **SECTION 40.** ATCP 50.28 (5) (a) 1. b. is created to read:

1 ATCP 50.28 (5) (a) 1. b. Extend any grant contracts, except staffing grants under s.
2 ATCP 50.32, funded but not completed in the preceding grant year, provided that the grant
3 recipient requests the extension by December 31 of the preceding grant year and the department
4 has not previously extended funding for the same contract from one grant year to another grant
5 year. Extensions of projects funded under s. 92.14 (10), Stats., shall comply with s. ATCP 50.35
6 (3).

7 **SECTION 41.** ATCP 50.28 (5) (a) 2. and 3. are amended to read:

8 ATCP 50.28 (5) (a) 2. Increase the total grant to any county. The department shall give
9 all counties notice and equal opportunity to compete for funding increases other than increases
10 due to extensions under subd. 1., voluntary transfers of cost-share funds from one county to
11 another county under subd. 5., and re-allocations of cost-share funds by the department under
12 subd. 5. from a reserve established in the annual allocation plan. The department shall make any
13 revisions in compliance with the requirements in par. (b).

14 3. Reduce a grant award to any county. The department shall give all counties notice and
15 an opportunity to comment for funding decreases other than those resulting from the voluntary
16 transfer of funds from one county to another county. The department shall make any revisions in
17 compliance with the requirements in par. (b).

18 **SECTION 42.** ATCP 50.28 (5) (a) 5. is created to read:

19 ATCP 50.28 (5) (a) 5. Approve the voluntary transfers of cost-share funds from one
20 county to another county, or re-allocations of funds by the department from a reserve established
21 in the annual allocation plan. Inter-county transfers shall comply with s. ATCP 50.34 (5m).

22 **SECTION 43.** ATCP 50.28 (5) (b) (intro.) is amended to read:

1 ATCP 50.28 (5) (b) (intro.) The department shall do all of the following before it revises
2 an annual grant allocation plan, if required under par. (a):

3 **SECTION 44.** ATCP 50.28 (5) (b) 1. (Note) is repealed.

4 **SECTION 45.** ATCP 50.28 (5) (c) is created to read:

5 ATCP 50.28 (5) (c) The department shall notify the LWCB, no later than April 15 of the
6 following year, of revisions made to the allocation plan based on transfers under par. (a) 5., re-
7 allocations under par. (a) 4., and extensions of funds under par. (a) 1. The department shall keep
8 records regarding the disposition of each transfer, reallocation and extension requested.

9 **SECTION 46.** ATCP 50.30 (1), (2) (intro.), (b), (c) and (d) are amended to read:

10 ATCP 50.30 (1) COUNTY PRIORITIES. The department shall give high priority to
11 maintaining county staff and project continuity. The department shall consider county priorities
12 identified in the county grant application under s. ATCP 50.26 and in the county's approved land
13 and water resource management plan under s. ATCP 50.12, and shall balance funding these
14 priorities with those in sub. (2).

15 (2) (intro.) STATEWIDE PRIORITIES. The department ~~may~~ shall give priority to county or
16 non-county projects that address statewide priorities identified by the department and DNR.
17 These priorities may include:

18 (b) Farms ~~for which the rate of cropland erosion is more than twice T-value~~ that pose
19 significant environmental risks based on failure to comply with nutrient management and other
20 farm conservation standards.

21 (c) Farms discharging substantial pollution to waters of the state, including farms issued
22 a DNR notice of intent under s. 281.20, Stats., or a DNR notice of discharge under ch. NR 243.

(d) Farms claiming farmland preservation tax credits under subch. IX of ch. 71, Stats.,
and subject to the soil and water conservation requirements under subch. V of ch. 91, Stats.

SECTION 47. ATPC 50.30 (2) (e) and (f) and (Note) are created to read:

ATPC 50.30 (2) (e) Projects related to the control of soil erosion and nonpoint source
pollution in which funding is based on the contribution of the activity to the overall pollution
problem.

(f) Projects in which funding is coordinated among state agencies to maximize impacts
in targeted areas.

Note: The department may work with the DNR and other funding entities to identify
sources of financial support to address locally-identified priorities that may not be
adequately funded based on statewide priorities in sub. (2). The department may,
for example, pursue grant priorities that do not adequately support installment of
conservation practices on non-farm or forested land or the control of invasive
species.

SECTION 48. ATPC 50.30 (3) (b), (g), (h) and (m) are amended to read:

ATPC 50.30 (3) (b) A county's demonstrated commitment and capacity to ~~implementing~~
implement and maintain the farm conservation practices required under s. ATPC 50.04.

(g) The timeliness and completeness of ~~county grant plans~~, applications and annual
reports.

(h) The ~~completeness of county grant~~ degree to which plans, applications and ~~supporting~~
~~data reports meet applicable criteria, including the adequacy of performance measures.~~

(m) The degree to which county activities are ~~consistent with~~ implement the county's
approved land and water resource management plan.

SECTION 49. ATPC 50.30 (3) (o) is renumbered (3) (r).

SECTION 50. ATPC 50.30 (3) (o) and (p) are created to read:

1 ATCP 50.30 (3) (o) The need for award caps or other cost control measures to maximize
2 funding available to meet conservation priorities or needs on agricultural lands.

3 (p) A county's commitment to meet department targets implementing the conservation
4 practices established in the annual grant application.

5 **SECTION 51.** ATCP 50.32 (3) (a) (Note) and (b) are amended to read:

6 ATCP 50.32 (3) (a) **Note:** Soil and water resource management activities may include
7 activities under this chapter ~~and, ch. 91, Stats., and s. 93.90, Stats.,~~ the CREP
8 program; activities related to ~~"priority watersheds" under ch. NR 120 and projects~~
9 ~~funded by DNR under ss. 281.65 and 281.66, Stats., and activities related to DNR~~
10 ~~notices of discharge under ch. NR 243.~~

11
12 A county may contract with engineers, nutrient management planners, computer
13 specialists, information and education specialists, consultants and other
14 independent contractors to work on behalf of the county land conservation
15 committee. A county may use annual staffing grant funds to pay for the services
16 of these independent contractors.

17
18 (b) Training for county employees and land conservation committee members to the
19 extent authorized under sub. (3m).

20 **SECTION 52.** ATCP 50.32 (3m) is created to read:

21 ATCP 50.32 (3m) **TRAINING COSTS.** An annual staffing grant may pay for any of the
22 following county employee and land conservation committee member training costs, including
23 registration fees, travel and materials:

24 (a) Training in conservation planning and management, technical standards
25 implementation, clerical assistance, computer usage, and communications.

26 (b) Courses building skills to perform current responsibilities or develop professionally
27 in the field of soil and water management.

28 (c) Other training costs identified in the grant application for the grant year in which the
29 funds are to be expended.

1 **SECTION 53.** ATCP 50.32 (5) (a) (Note) is amended to read:

2 ATCP 50.32 (5) (a) **Note:** Subject to the availability of funds, the department will
3 normally ~~may~~ offer each county at least the a minimum staffing grant amount
4 required in par. (b). ~~Additional staffing grant amounts, if any, may be based on~~
5 ~~the county's annual financial contribution as last reported under s. ATCP 50.18~~
6 ~~(1) (e). But the department may also consider other factors under specified in the~~
7 ~~annual grant application. See s. ATCP 50.26. In lieu of offering a minimum~~
8 ~~grant award, or in addition to such an award, the department may base awards on~~
9 ~~the grant priorities in s. ATCP 50.30. The department has legal discretion to~~
10 adjust grant awards from year to year, based on any of those factors.

11
12 **SECTION 54.** ATCP 50.32 (5) (b) is repealed and recreated to read:

13 ATCP 50.32 (5) (b) The total grant amount reimbursed to a county for training and
14 support costs may not exceed 10% of a county's annual grant allocation.

15 **SECTION 55.** ATCP 50.32 (5) (b) (Note) is repealed.

16 **SECTION 56.** ATCP 50.32 (7) (a) (Note) is created to read:

17 ATCP 50.32 (7) (a) **Note:** The department does not provide paper copies of its grant
18 forms. To obtain the most current program grant forms, including the form to
19 request reimbursement from the department, counties should refer to the
20 program's working manual on the department website at:
21 <http://datcp.wi.gov/ATCP50>.

22
23 **SECTION 57.** ATCP 50.32 (7) (b) is amended to read:

24 ATCP 50.32 (7) (b) ~~The county's chief financial officer~~ An authorized county
25 representative shall sign each reimbursement request. The request shall certify that the county
26 has fully paid the costs for which the county seeks reimbursement, and that those costs are
27 eligible for reimbursement under this chapter and the grant contract.

28 **SECTION 58.** ATCP 50.32 (7) (c) 4. and (Note) are repealed and recreated to read:

29 ATCP 50.32 (7) (c) 4. The amount of applicable matching funds provided to cover the
30 county portion of salary and fringe benefits.

1 **Note:** Counties can use various funding sources to meet their match requirement,
2 including county levy, permit fees, private grants, federal grants, state funds other
3 than those under chs. 92, 281 and 283, Stats., or any other qualifying source.
4

5 **SECTION 59.** ATPC 50.32 (8) (b) and (c) 2. are amended to read:

6 ATPC 50.32 (8) (b) The department may reimburse eligible county employee training
7 and support costs at 100%, subject to sub. (5) (b).

8 (c) 2. The department may reimburse eligible costs for the county's first designated staff
9 person at 100%, ~~regardless of whether that person is a priority watershed staff person.~~

10 **SECTION 60.** ATPC 50.32 (8) (c) 3. is repealed.

11 **SECTION 61.** ATPC 50.32 (8) (c) 4. is amended to read:

12 ATPC 50.32 (8) (c) 4. Except as provided under subd. 2. ~~or 3.~~, the department may
13 reimburse eligible staffing costs at the rate prescribed in s. 92.14 (5g) (a), Stats.

14 **SECTION 62.** ATPC 50.34 (1) (b) is amended to read:

15 ATPC 50.34 (1) (b) State or local regulations identified in the county's land and water
16 resource management plan under s. ATPC 50.12 (2) (b). ~~The committee may not use funds under~~
17 ~~this chapter to award cost-share grants for practices needed to comply with a DNR notice of~~
18 ~~intent or notice of discharge under s. 281.20 or ch. 283, Stats.~~

19 **SECTION 63.** ATPC 50.34 (1) (b) (Note) is repealed and recreated to read:

20 ATPC 50.34 (1) (b) **Note:** The committee may use funds for recording fees and other
21 related costs allowed under this chapter, but may not award funds under this
22 chapter to cover state or local permit fees.
23

24 **SECTION 64.** ATPC 50.34 (1) (d) is created to read:

25 ATPC 50.34 (1) (d) Any applicable requirements or provisions in ch. 92, Stats.

26 **SECTION 65.** ATPC 50.34 (3) (a) and (Note), (c) (Note) and (d) are amended to read:

1 ATCP 50.34 (3) (a) File with the department a copy of the county's cost-share contract
2 with the landowner and the supporting documentation specified in department forms to be
3 submitted to obtain reimbursement. The cost-share contract shall comply with s. ATCP 50.40
4 (8) and (9).

5 **Note:** The department must approve any cost-share contract that exceeds \$50,000. See s.
6 ATCP 50.40 (8).
7

8 (c) **Note:** ~~The department~~ Department forms will provide forms that counties must use to
9 certify the information under sub. (3) specify the documentation a county must
10 provide under par. (a) with its reimbursement request , or in lieu of
11 documentation, the information the county must certify under par. (c). ~~A~~ When a
12 county land conservation committee need is not required to submit documentation
13 supporting and provides, instead, its certification under par. (c), but it must keep
14 that supporting documentation on file as required by sub. (7). The committee
15 must make the documentation available to the department and grant auditors upon
16 request.
17

18 (d) File all reimbursement requests, required cost-share contracts and supporting
19 documentation by February 15 of the year following the grant year.

20 **SECTION 66.** ATCP 50.34 (5m) and (Note) are created to read:

21 ATCP 50.34 (5m) INTER-COUNTY TRANSFERS. The department may approve an
22 agreement between counties to transfer uncommitted bond revenue or other cost-share funds if
23 all of the following apply:

24 (a) The grant funds subject to the transfer were not previously extended by the
25 transferring county.

26 (b) The county transferring the cost-share funds certifies to the department that it has an
27 uncommitted portion of its cost-share allocation equal to or greater than the transfer amount, and
28 has approval of its land conservation committee to make these funds available for transfer.

1 (c) The county receiving the cost-share funds has made a commitment to use the
2 transferred funds on one or more specific projects, and has the approval of its land conservation
3 committee to accept the transferred funds for cost-sharing on the specific projects.

4 (d) The counties apply for the transfer of cost-share funds on a form provided by the
5 department. The department may require any information on the form reasonably necessary for
6 the department to approve the transfer of funds.

7 **Note:** Transferred funds may be extended by the receiving county into the subsequent
8 grant year for the same project, subject to sub. (6).
9

10 **SECTION 67.** ATCP 50.34 (6) (a) 3. is amended to read:

11 ATCP 50.34 (6) (a) 3. The county land conservation committee files with the
12 department, by December 31 of the initial grant year, a written request ~~and justification for the~~
13 funding extension that identifies the cost-shared projects for which the extended funds will be
14 used, and the total funds to be extended. The department may, for good cause, accept an
15 extension request filed between December 31 of the initial grant year and February 15 of the
16 subsequent grant year.

17 **SECTION 68.** ATCP 50.34(6) (a) 3. (Note) is created to read:

18 ATCP 50.34 (6) (a) 3. **Note:** Good cause may include the long-term absence or loss of
19 critical staff, or the damage or destruction of records.
20

21 **SECTION 69.** ATCP 50.34 (6) (b) is amended to read:

22 ATCP 50.34 (6) (b) A county may ~~not~~ transfer a funding extension under par. (a) from
23 one landowner cost-share contract to another provided that the department approves an extension
24 of both projects. Extended funds may not be used on new cost-share contracts. Extended
25 funding, if not spent for the designated cost-share contract in the year of the extension, remains
26 with the department for distribution under a future year's allocation plan.

1 **SECTION 70.** ATCP 50.35 is created to read:

2 ATCP 50.35 **Grants for other services** . (1) Under s. 92.14 (10), Stats., the department
3 may award a grant identified in the annual allocation plan to any person for services and
4 activities including information, education and training. The department shall enter into a grant
5 contract with the grant recipient for the payment of these grant funds. The contract shall include
6 relevant terms required under this section and ss. ATCP 50.34 and 50.36, and appropriate
7 restrictions on reimbursement of costs.

8 (2) A person applying for a grant under s. 92.14 (10), Stats., shall file a written grant
9 application by April 15 of the year preceding the year for which the department awards the
10 grant. The grant application shall include a proposed budget and supporting documentation. The
11 department may require a grant applicant to apply on a form provided by the department.

12 (3) Contracts under this section may be extended for a period of one year if all of the
13 following apply:

14 (a) The grant recipient submits a written extension request by December 31 of the initial
15 grant year, and identifies how the unspent funds will be used in the subsequent grant year. The
16 department may, for good cause, accept an extension request filed between December 31 of the
17 initial grant year and February 15 of the subsequent grant year.

18 (b) The grant is funded under s. 20.115 (7) (qf), Stats., or other provisions authorizing
19 department expenditure of funds for grants other than the county staffing and support grants
20 under s. ATCP 50.32.

21 (4) If a county is awarded a grant under this section, it shall do all of the following:

22 (a) Use the grant funds only for work specified in the grant contract required under sub. (1) and
23 not for any work the county is authorized to perform under s. 92.14 (3) (a) through (f), Stats.

1 (b) Develop and implement county procedures to ensure that the county seeks
2 reimbursement under this grant contract only for work authorized under this grant contract under
3 sub. (1), and does not seek reimbursement under this grant contract for work performed under
4 any other grant contract.

5 (5) Except as provided in this subchapter, a grant recipient under this section shall retain
6 all records and forms related to the grant award and its administration, including original
7 subcontracts, if any, and receipts for disbursements for a minimum of 3 years after the end of the
8 year of the grant award.

9 **SECTION 71.** ATCP 50.36 (1) is amended to read:

10 ATCP 50.36 (1) COUNTY GRANT CONTRACTS. The department shall enter into an
11 annual grant contract with a county land conservation committee for the payment of grant funds
12 awarded to the county. The county land conservation committee shall approve the terms of the
13 grant contract and any amendment before the grant contract or amendment is signed on behalf of
14 the county. The contract shall include relevant terms required under this section and ss. ATCP
15 50.32, ~~and 50.34~~ and, if applicable, 50.35.

16 **SECTION 72.** ATCP 50.36 (1) (Note) is created to read:

17 ATCP 50.36 (1) **Note:** The department may request that a county provide proof of the
18 authority of the signatory to sign a grant contract or amendment under this chapter
19 on behalf of the county.
20

21 **SECTION 73.** ATCP 50.36 (2) (a) is amended to read:

22 ATCP 50.36 (2) OTHER GRANT CONTRACTS. (a) The department shall enter into a
23 grant contract with every ~~non-county~~ grant recipient awarded a grant under this chapter s. 92.14
24 (10), Stats.

25 **SECTION 74.** ATCP 50.40 (2) (d) and (Note) are created to read:

ATCP 50.40 (2) (d) Paragraph (a) does not apply to requirements imposed on a livestock facility operator in connection with a local approval or permit issued pursuant to s. 93.90, Stats., and ch. ATCP 51.

Note: To secure a local approval or permit, an operator must meet the required standards, regardless of whether the applicant receives cost-sharing (see s. 93.90, Stats.). However, a political subdivision may choose to provide cost-sharing to the operator.

SECTION 75. ATCP 50.40 (3) (a) (Note) is amended to read:

ATCP 50.40 (3) (a) **Note:** A county may package cost-share payments in a variety of ways. For example, a county might choose to negotiate a single overall payment (sometimes called an "incentive" payment) with a landowner who voluntarily agrees to maintain a combination of "soft" practices ~~(such as nutrient management, residue management and contour farming, for example)~~ as part of ~~an overall farm conservation plan~~. The county may pay the landowner to continue these practices, even though the landowner has followed the same practices in the past. In some cases, counties may be limited, by the terms of prior department cost-share grants to landowners, in making payments to landowners to continue compliance with performance standards. The county is free to negotiate the cost-share amount ("incentive" payment amount) with the landowner, as long as the arrangement is voluntary.

SECTION 76. ATCP 50.40 (3) (b) 12. to 14. are created to read

ATCP 50.40 (3) (b) 12. Pay for the installation of a practice on land owned by the state of Wisconsin.

13. Bring a landowner into compliance with standards required under the landowner's WPDES permit under chs. 281 and 283, Stats.

14. Pay for any state or local administrative permit fees.

SECTION 77. ATCP 50.40 (4) and (7) (b) are amended to read:

ATCP 50.40 (4) **ELIGIBLE COSTS.** A cost-share grant may pay for relevant costs identified in s. ATCP 50.08 (3) and (4), regardless of whether cost-sharing is required under sub. (2) or s.

ATCP 50.08. A cost-share grant may pay for the costs incurred by a county or landowner in

1 recording, with the county register of deeds, any cost-share contract, whether or not recording is
2 required under s. ATCP 50.40 (14). A cost-share grant may not pay for ineligible costs
3 identified under sub. (3) (b) or subch. VIII.

4 (7) (b) A cost-share grant may reimburse the cost of engineering services under par. (a)
5 provided by a professional engineer registered under ch. 443, Stats, or ~~an agricultural a~~
6 conservation engineering practitioner certified at the applicable rating under s. ATCP 50.46. A
7 cost-share grant may not reimburse the cost of engineering services provided by the county land
8 conservation committee or its agent.

9 **SECTION 78.** ATCP 50.40 (9) (c) (intro.) is renumbered ATCP 50.40 (9) (c) and
10 amended to read:

11 ATCP 50.40 (9) (c) The location of the land on which the cost-shared practice is to be
12 installed, and a specific legal description of the land if cost-share payments may exceed ~~the~~
13 following applicable amount: \$14,000.

14 **SECTION 79.** ATCP 50.40 (9) (c) 1. to 3. are repealed.

15 **SECTION 80.** ATCP 50.40 (9) (d) and (j) (Note) are amended to read:

16 ATCP 50.40 (9) (d) Specifications for the cost-shared practice, including engineering
17 specifications for any ~~agricultural~~ conservation engineering practice identified under s. ATCP
18 50.46 (2).

19 (j) **Note:** Subchapter VIII specifies a minimum maintenance period of 10 years for most
20 conservation practices. But it does not specify a minimum maintenance period
21 for the following "soft" practices:

- 22 • Contour farming (s. ATCP 50.67).
- 23 • Cover crop (s. ATCP 50.68).
- 24 • Nutrient management (s. ATCP 50.78).
- 25 • Pesticide management planning (s. ATCP 50.79).
- 26 • Residue management (s. ATCP 50.82).
- 27 • Stripcropping (s. ATCP 50.89).
- 28

1 **SECTION 81.** ATCP 50.40 (9) (L) (intro.) is renumbered ATCP 50.40 (9) (L) and
2 amended to read:

3 ATCP 50.40 (9) (L) If the contract provides for a cost-share grant that exceeds the
4 ~~following applicable amount \$14,000~~, an agreement that the contract runs with the land and is
5 binding on subsequent owners or users of the land for the period of time required under subch.
6 VIII.;

7 **SECTION 82.** ATCP 50.40 (9) (L) 1. to 3. are repealed.

8 **SECTION 83.** ATCP 50.40 (9) (n) and (10) (b) are amended to read:

9 ATCP 50.40 (9) (n) ~~An agreement that the Appropriate county land conservation~~
10 ~~committee must pre-approve, according to a procedure specified in the contract, pre-approval~~
11 ~~procedures for making any construction changes that may affect the terms or amount of the cost-~~
12 ~~share grant.~~

13 (10) (b) Installed in compliance with applicable construction site erosion control
14 standards contained in the DNR ~~Wisconsin construction site best management practice~~
15 ~~handbook, DNR Pub. WR-222 (April 1994) Storm Water Construction Technical Standards, in~~
16 ~~effect on the effective date of this section ... [LRB inserts date].~~

17 **SECTION 84.** ATCP 50.40 (10) (b) (Note) is repealed and recreated to read:

18 ATCP 50.40 (10) (b) **Note:** A copy of these technical standards can be found at the DNR
19 website at: <http://dnr.wi.gov/topic/stormwater/standards/index.html>. Copies of
20 these technical standards are also on file with the department and the legislative
21 reference bureau.
22

23 **SECTION 85.** ATCP 50.40 (11) (b) (intro.), 2. and 3., are amended to read:

24 ATCP 50.40 (11) (b) (intro.) That the cost-shared practice is designed and installed
25 according to sub. (10). If the cost-shared practice is ~~an agricultural~~ a conservation engineering

1 practice identified under s. ATCP 50.46 (2), one of the following shall certify in writing that the
2 practice complies with sub. (10):

3 2. ~~An agricultural~~ A conservation engineering practitioner certified under s. ATCP
4 50.46.

5 3. A well driller or pump installer registered under s. 280.15, Stats., if the ~~agricultural~~
6 conservation engineering practice consists of well construction or decommissioning.

7 **SECTION 86.** ATCP 50.40 (14) (a), (b) and (c) are repealed.

8 **SECTION 87.** ATCP 50.40 (14) (intro.) is renumbered (14) (a) and amended to read:

9 ATCP 50.40 (14) (a) If a county contract with a landowner exceeds the following
10 ~~applicable amount~~ \$14,000, the county or the landowner shall record the contract with the county
11 register of deeds before the county makes any cost-share payment to the landowner.

12 **SECTION 88.** ATCP 50.40 (14) (b), (c) and (d) and (Note) are created to read:

13 ATCP 50.40 (14) (b) If recording is required under this subsection, the county shall
14 record the cost-share contract before making any reimbursement payments to the landowner or
15 grant recipient.

16 (c) Recording a contract which exceeds the amount in par. (a) is not required if the
17 contract is only for conservation practices listed in s. ATCP 50.08 (5) (b).

18 (d) A county may choose to voluntarily record any contract in which cost-share
19 payments under this chapter were awarded.

20 **Note:** Cost-share funds can be used to record any contract authorized under this chapter.

21 **SECTION 89.** ATCP 50.40 (17) is amended to read:
22

23 ATCP 50.40 (17) COMBINED GRANTS. Cost-share grants under this chapter may be
24 combined with grants from other federal, state, local and private sources. ~~Department~~ Except as

1 restricted under s. ATCP 50.42 (1), department funds allocated under this chapter may be
2 combined with DNR funds allocated under s. 281.65 or 281.66, Stats., to finance up to 70% of
3 the total cost of a project, or up to 90% in cases of economic hardship under s. ATCP 50.42 (4).
4 This subsection does not limit the use of cost-share funds from other sources. A cost-share grant
5 under this chapter may not reimburse a landowner for any costs that another governmental entity
6 is also reimbursing.

7 **SECTION 90.** ATCP 50.42 (1) (a) (Note), (bm), (dg) and (dr) and (Note) are created to
8 read:

9 ATCP 50.42 (1) (a) **Note:** The maximum cost-share rates in this section and other
10 sections were established to meet the requirements of s. 281.16 (3) (e), Stats.,
11 which provides that an owner or operator of an agricultural facility may not be
12 required by the state or a municipality to comply with the performance standards,
13 prohibitions, conservation practices or technical standards unless cost-sharing is
14 available for at least 70% of the cost of compliance, or is 70% to 90% of the cost
15 of compliance in cases of economic hardship. These maximum cost-share rates
16 are not required for the practices specified in s. ATCP 50.42 (1) (dg) and (dr).

17
18 (bm) The economic hardship provision under sub. (4) is available to owners and grant
19 recipients who operate farms and is not available to non-farmers.

20 (dg) The cost-share payments for the following conservation practices may not exceed
21 50% of the total eligible costs to install and maintain the practice unless the landowner is
22 required to install the practice to achieve compliance with an agricultural performance standard
23 on cropland, pastures or a livestock operation:

- 24 1. Access roads under s. ATCP 50.65.
- 25 2. Roof runoff systems under s. ATCP 50.85.
- 26 3. Streambank or shoreline protection under s. ATCP 50.88.
- 27 4. Stream crossing under s. ATCP 50.885.
- 28 5. Wetland development or restoration under s. ATCP 50.98.

(dr) The cost-share payments for any conservation practice installed on land owned by a local governmental unit may not exceed 50% of the total eligible costs to install and maintain the practice.

Note: County employees and land conservation committee members are subject to the conflict of interest provisions of s. ATCP 50.40 (19) when providing cost-sharing to the local governmental units with which they are affiliated.

SECTION 91. ATCP 50.42 (4) (intro.) is amended to read:

ATCP 50.42 (4) (intro.) ECONOMIC HARDSHIP. A landowner of a farm operation qualifies for economic hardship treatment if all the following apply:

SECTION 92. ATCP 50.46 (title) is amended to read:

ATCP 50.46 (title) **Agricultural Conservation engineering practitioners.**

SECTION 93. ATCP 50.46 (1) and (2) are repealed and recreated to read:

ATCP 50.46 (1) **GENERAL.** (a) A conservation engineering practitioner certified under this section, or approved under a parallel federal program identified in par. (b), may implement the agricultural or other conservation engineering practices in ch. 92, Stats., or s. 281.65, Stats., and perform any of the following activities consistent with the person's level of certification under this section:

1. Certify the design specifications for a conservation engineering practice under sub. (2).

Note: A design certification typically involves the preparation or approval of a design document that prescribes the installation of a conservation engineering practice. The process typically requires the application of engineering principles and methods, and may include several planning and design components. For example, a practitioner may conduct a site inventory to gather data for the design process, may identify or confirm particular water quality problems on the site, and may evaluate the adequacy of the proposed practices to address those problems.

1 2. Certify that a conservation engineering practice under sub. (2) has been installed
2 according to an approved design, and according to applicable standards and specifications.

3 3. Engage in planning review and other engineering functions related to the installation
4 of engineered conservation practices under sub. (2).

5 (b) The department shall operate its certification program under this section, to the extent
6 possible, in conformance with the NRCS, or any other applicable federal agency system of
7 engineering job approval authority.

8 **Note:** To fulfill its responsibility for providing technical assistance under 7 CFR Part
9 610, NRCS currently administers a system of engineering job approval authority
10 (JAA) that assigns individuals appropriate job approval based on the person's
11 training, experience and demonstrated competency to perform engineering
12 activities.

13
14 (c) For funding purposes under this chapter or ch. NR 120, no person, other than a
15 conservation engineering practitioner certified under this section or a professional engineer
16 registered under ch. 443, Stats., may certify that conservation practices were properly designed
17 or installed in compliance with standards under this chapter or s. 281.65, Stats.

18 **Note:** See ss. 92.18 and 443.14 (10), Stats. A state or county employee certified under
19 this section is exempt from the professional engineering registration requirements
20 of ch. 443, Stats., when engaged in state or county activities under ch. 92, Stats.,
21 or s. 281.65, Stats., regardless of whether the activities are funded under this
22 chapter.

23
24 (d) Notwithstanding par. (c), a well driller or pump installer registered under s. 280.15,
25 Stats., may certify a well construction or decommissioning under sub. (1).

26 (2) CONSERVATION ENGINEERING PRACTICES. For purposes of this section, a conservation
27 engineering practice includes any of those practices identified in subch. VIII, authorized by the
28 department under s. ATCP 50.40 (3), allowed under s. 281.65, Stats., or approved and published,
29 as part of the NRCS technical guide or as a formal technical standard by the DNR.

1 **Note:** The DNR publishes its technical standards on its website at, for example:
2 <http://dnr.wi.gov/topic/stormwater/standards/index.html>.

3
4 **SECTION 94.** ATPCP 50.46 (2m) and (Note) are created to read:

5 ATPCP 50.46 (2m) STATE SOIL AND WATER CONSERVATION ENGINEER. The department
6 may designate an employee as the state soil and water conservation engineer. The designated
7 person shall be a professional engineer registered under ch. 443, Stats., and demonstrate
8 sufficient training and experience to carry out the functions of the position. The state soil and
9 water conservation engineer shall do all of the following:

10 (a) Oversee the work of the field engineers who are responsible for certifying
11 conservation engineering practitioners under this section.

12 (b) Conduct engineering activities requiring job approval authority ratings higher than
13 those authorized under this section including job class ratings of V and above.

14 **Note:** The rating system used for certification under this section is based on the NRCS
15 engineering JAA framework. Engineering practices in job classes I through V
16 must be of low hazard potential. Projects that involve practices above job class V
17 must be performed under the authority of the state soil and water conservation
18 engineer.

19
20 **SECTION 95.** ATPCP 50.46 (3) (title) is amended to read:

21 ATPCP 50.46 (3) (title) ~~AGRICULTURAL~~ CONSERVATION ENGINEERING PRACTITIONER;
22 CERTIFICATION.

23 **SECTION 96.** ATPCP 50.46 (3) is renumbered (3) (title) and (a) and amended to read:

24 ATPCP 50.46 (3) (title) AGRICULTURAL ENGINEERING PRACTITIONER; CERTIFICATION. (a)

25 A person who wishes to be certified as an ~~agricultural~~ a conservation-engineering practitioner
26 shall apply to the department or a county land conservation committee. ~~An applicant may apply~~
27 ~~orally or in writing.~~ The department or the county land conservation committee shall promptly

1 refer the application to the department's designated field engineer. The field engineer shall
2 evaluate the applicant and issue a decision granting or denying the request.

3 **SECTION 97.** ATCP 50.46 (3) (b) and (Note) are created to read:

4 ATCP 50.46 (3) (b) Applicants for certification shall apply on a form provided by the
5 department. The application form shall include all of the following:

6 1. The name and affiliation of the person applying for certification, and the name and
7 affiliation of each DATCP, NRCS or other agency personnel authorized to grant certification to
8 the applicant.

9 2. The practices for which certification may be granted, including specific practice types
10 and applicable references to the NRCS technical guide and other formal technical standards
11 authorized under this section.

12 3. The controlling factor used to distinguish different classes of certification within each
13 practice, and the specific application of the factor to the 5 levels for which certification can be
14 obtained.

15 4. A maximum certification rating level in the 3 areas of competency for each practice
16 that the applicant is qualified to perform, as specified in sub. (5).

17 5. Any other information the department determines to be reasonably necessary for
18 certification purposes including certification for practice standards approved by entities other
19 than NRCS.

20 **Note:** A person may obtain a certification form by calling (608) 224-4622, by visiting
21 the department website at: <http://datcp.wi.gov/ATCP50>, or by writing to the
22 following address:

23
24 Wisconsin Department of Agriculture, Trade and Consumer Protection
25 Division of Agricultural Resource Management
26 P.O. Box 8911
27 Madison, WI 53708-8911

1
2 **SECTION 98.** ATCP 50.46 (4) (a), (5) (a) and (Note), (6) (b), (7) (a), (9) (c) 2. and (10)

3 are amended to read:

4 ATCP 50.46 (4) (a) To evaluate an applicant under sub. (3), the department's field
5 engineer shall complete ~~the~~ a department certification form shown in Appendix E. The field
6 engineer shall rate the applicant under sub. (5) based on the applicant's demonstrated knowledge,
7 training, experience and record of appropriately seeking assistance. Evaluations shall be fair and
8 consistent.

9 (5) (a) For each type of agricultural or other conservation engineering practice identified
10 in ~~Appendix E~~ the required certification form, the department's field engineer shall identify the
11 most complex of the 5 job classes in ~~Appendix E~~ the practice for which the applicant is
12 authorized to do each of the following:

13 1. Conduct planning activities, including site inventory and evaluation functions to
14 define alternative engineering solutions.

15 2. Certify that design specifications for jobs in that class comply with standards under
16 this chapter or those identified in subch. VIII, authorized by the department under s. ATCP 50.40
17 (3), allowed by s. 281.65, Stats., or approved and published, as part of the NRCS technical guide
18 or as a formal technical standard by the DNR.

19 23. Certify that jobs in that class have been installed according to the approved design,
20 and according to any applicable standards and specifications.

21 **Note:** ~~The rating system under par. (a) is designed to be reasonably consistent with the~~
22 ~~system used by NRCS under 7 CFR 610.1 to 610.5. Appendix E is similar to the~~
23 ~~NRCS job approval delegation form. It identifies the controlling factors used to~~
24 ~~determine the relative difficulty of job classes, as well as the NRCS standard that~~
25 ~~applies. In cases where department field engineers may be required to provide a~~
26 ~~job certification approval at a level higher than their own, they should consult with~~
27 ~~a person who has appropriate certification in the areas being rated. A person who~~

1 is certified at a job level under par. (a) may certify his or her own work at that level
2 for any purpose including funding purposes authorized under this chapter.
3

4 (6) (b) Whenever the department's field engineer certifies ~~an agricultural~~ a conservation
5 engineering practitioner, the field engineer shall issue a written certification ~~in~~ on the
6 department's certification form shown in Appendix E. The certification becomes effective when
7 signed by all of the following:

8 (7) (a) A department field engineer shall review each certification rating under sub. (5) at
9 least once every 3 years, and may review a rating at any time. A field engineer shall review a
10 rating whenever a certified ~~agricultural~~ conservation engineering practitioner requests that
11 review.

12 (9) (c) 2. State and federal agencies that provide cost-share funds for ~~agricultural~~
13 conservation engineering practices.

14 (10) CERTIFICATION GUIDELINES. The department may publish guidelines for the
15 certification of ~~agricultural~~ conservation engineering practitioners under this section. The
16 guidelines may include suggested or required courses, training activities, and types of knowledge
17 and experience that may help applicants qualify for certification at specified rating levels, or be
18 required in order to retain certification at certain rating levels.

19 **SECTION 99.** ATCP 50.46 (11) is renumbered (11) (title) and (a) and amended to read:

20 ATCP 50.46 (11) SIGNATURE AND DATE REQUIRED; APPROVALS. (a) Whenever a person
21 certified under this section approves or submits for approval any document related to the design
22 or construction of ~~an agricultural~~ a conservation engineering practice under sub. (2), that person
23 shall sign and date that document.

24 **SECTION 100.** ATCP 50.46 (11) (b) is created to read:

1 ATCP 50.46 (11) (b) Any engineered practice designed by a person certified under this
2 section shall include project documentation establishing that the practice was designed according
3 to applicable standards, and that the design was reviewed and approved for compliance with
4 those standards. Any person approving a design shall have job approval authority at the level
5 required by the engineered practice. For practices requiring a job class authority of III or higher,
6 at least one person other than the practice designer shall review and approve the design. For
7 practices requiring job class authority of I or II, the person preparing the design may also review
8 and approve the design.

9 **SECTION 101.** ATCP 50.46 (12) is amended to read:

10 ATCP 50.46 (12) SCOPE OF CERTIFICATION. No certified ~~agricultural~~ conservation
11 engineering practitioner may, for any purpose, including funding purposes under this chapter or
12 s. 281.65, Stats., certify any matter under sub. (5) (a) in a job class more complex than that for
13 which the practitioner is authorized under sub. (5) (a). In the event a practitioner exceeds the
14 authority authorized for certifying conservation practices, the department shall review the matter
15 and may take action under sub. (7) or (9).

16 **SECTION 102.** ATCP 50.48 (2) (a) 4. (Note) is created to read:

17 ATCP 50.48 (2) (a) 4. **Note:** The department may develop minimum standards for a
18 department-approved training course for farmers who develop their own nutrient
19 management plans.
20

21 **SECTION 103.** ATCP 50.50 (2) (intro.) and (d) are amended to read:

22 ATCP 50.50 (2) (intro.) APPLYING FOR CERTIFICATION. A laboratory operator may apply
23 to the department for certification under sub. (1). An operator shall submit a separate
24 application, ~~using the form shown in Appendix A~~ on a form provided by the department, for each

laboratory for which the operator seeks certification. The application shall include all of the following:

(d) The soil tests, test methods, and nitrogen estimation methods used by the laboratory. The laboratory shall be capable of performing the following tests according to methods prescribed by the University of Wisconsin-Extension in *Nutrient application guidelines for field, vegetable, and fruit crops in Wisconsin*, UWEX Publication A2809 (2006~~2012~~), and by the University of Wisconsin-Madison soil science department in *Wisconsin Procedures for Soil Testing, Plant Analysis and Feed & Forage Analysis*, Soil Fertility Series (~~December, 2007~~) (March, 2012), and shall be capable of estimating nitrogen levels based on those tests:

SECTION 104. ATCP 50.50 (2) (d) 5. (Note) is created to read:

ATCP 50.50 (2) (d) 5. **Note:** Copies of the *Nutrient application guidelines for field, vegetable, and fruit crops in Wisconsin*, UWEX Publication A2809 (2012) and the *Wisconsin Procedures for Soil Testing, Plant Analysis and Feed & Forage Analysis, Soil Fertility Series* (March, 2012) are on file at the department and legislative reference bureau. To obtain a copy of A2809, see s. ATCP 50.04 (3) (f) 4. (Note). Copies of the Wisconsin Procedures publication are available at the University of Wisconsin website at: <http://uwlab.soils.wisc.edu/lab-procedures/>.

SECTION 105. ATCP 50.50 (2) (g) (Note) is amended to read:

ATCP 50.50 (2) (g) **Note:** A list of approved soil testing laboratories can be found at the following web address: ~~<http://www.datcp.state.wi.us/arm/agriculture/land-water/conservation/nutrient-mngmt/planning.jsp>~~ <http://datcp.wi.gov/ATCP50> or by calling (608) 224-4622.

SECTION 106. ATCP 50.50 (2) (g) (second Note) is created to read:

ATCP 50.50 (2) (g) (**second**) **Note:** A person may obtain a copy of the soil test laboratory certification form by visiting the department website at: <http://datcp.wi.gov/ATCP50> or by calling (608) 224-4622.

SECTION 107. ATCP 50.50 (4) (intro.), (c) (Note), (8) (b) (Note) and (c) (Note) are amended to read:

ATCP 50.50 (4) (intro.) NUTRIENT RECOMMENDATIONS. If a certified laboratory recommends nutrient applications to a landowner that exceed the amounts required to achieve applicable crop fertility levels recommended by the University of Wisconsin Extension in ~~Soil Test Recommendations~~ Nutrient application guidelines for Field, Vegetable and Fruit Crops in Wisconsin, UWEX publication A-2809 ~~A2809 (19982012)~~, the laboratory shall make those recommendations in writing and shall disclose all of the following in the same document:

(c) ~~Note: Appendix B contains a convenient summary of UWEX publication A2809, for selected crops. You may obtain the complete publication and the summary from your county extension agent. The complete publication is also on file with the department and the legislative reference bureau. For further information, see Appendix G. To obtain a copy of A2809, see s. ATCP 50.04 (3) (f) 4. (Note).~~

(8) (b) ~~Note: The University of Wisconsin-Extension publication, Recommended Methods of Manure Analysis, UWEX publication A3769 (2003), is on file with the department and legislative reference bureau. Copies may be obtained from the University of Wisconsin-Extension at the following address: University of Wisconsin-Madison, Department of Soil Science, 1525 Observatory Drive, Madison, WI 53706-1299 by visiting the UWEX website at: <http://learningstore.uwex.edu>.~~

(c) ~~Note: The To obtain copies of the NRCS technical guide nutrient management standard 590 (September, 2005) is reproduced in Appendix D. The and the Wisconsin conservation planning technical note WI-1 is not reproduced in Appendix D but is on file with the department and the legislative reference bureau. Copies may be obtained from your county land conservation office or at the following web address: <http://www.datcp.state.wi.us/arm/agriculture/land-water/conservation/nutrient-mngmt/planning.jsp>, see s. ATCP 50.04 (3) (dm) 1. (Note).~~

SECTION 108. ATCP 50.52 (1) (g) and (Note) and (2) (d) are amended to read:

ATCP 50.52 (1) (g) Issue training guidelines and requirements for certified agricultural conservation engineering practitioners under s. ATCP 50.46 (10).

Note: The department guidelines may include suggested or required courses, training activities, and the types of knowledge and experience that may help applicants qualify for certification at specified rating levels, or be required in order to maintain certification at certain rating levels.

(2) (d) The statewide association of representing land conservation committees and their staffs.

SECTION 109. ATCP 50.52 (2) (e) is repealed.

SECTION 110. ATCP 50.54 (1) (Note) and (2) (b) are amended to read:

ATCP 50.54 (1) **Note:** "Local regulations" are defined in s. ATCP 50.01(18). Local conservation requirements should be consistent with this chapter (see ss. 92.05 (1), (3) (c) and (L), 92.07 (2), 92.11, 92.15 (2) to (4), 92.16, 92.17, 93.90 and 281.16 (3), Stats.). The department may review and comment on local regulations, as it deems necessary. See specific requirements related to manure storage ordinances (s. ATCP 50.56), agricultural shoreland management ordinances (s. ATCP 50.58) and livestock ordinances (s. ATCP 50.60). A local regulation may not require a livestock operator to obtain a license or permit for a new or expanding livestock operation, except as specifically authorized under s. 93.90, Stats., and ch. ATCP 51. When exercising their approval authority under the livestock facility siting law, political subdivisions are limited in their application of local manure storage ordinances adopted under s. 92.16, Stats., and s. ATCP 50.56. (See s. ATCP 51.18 (6) (Note)).

(2) (b) Paragraph (a) does not apply to a nutrient management plan required under-a permit for a manure storage system voluntarily constructed by a landowner; any of the following:

SECTION 111. ATCP 50.54 (2) (b) 1. and 2. are created to read:

ATCP 50.54 (2) (b) 1. A permit for a manure storage system voluntarily constructed by a landowner.

2. A permit required for a new or expanding livestock facility operation regulated under ch. ATCP 51.

SECTION 112. ATCP 50.56 (2) (e) and (f) are amended to read:

ATCP 50.56 (2) (e) ~~Abandonment~~ Closure provisions under sub. (4), if any.

(f) Conditions, if any, under which the county, city, village or town may require the abandonment closure of a manure storage system.

1 **SECTION 113.** ATCP 50.56 (3) is repealed and recreated to read:

2 ATCP 50.56 (3) CONSTRUCTION PROVISIONS. (a) An ordinance adopted under s. 92.16,
3 Stats., shall establish requirements for constructing a new or modified manure storage system
4 including storage and transfer components to handle manure.

5 **Note:** See s. ATCP 50.01 (20).

6 (b) An ordinance adopted under s. 92.16, Stats., shall include provisions that do all of the
7 following:
8

9 1. Prohibit construction of any part of a manure storage system without a permit from the
10 county, city, village or town that adopts the ordinance.

11 **Note:** A local governmental unit may not require a manure storage permit for livestock
12 facilities if it also requires the livestock facility to obtain a permit under the
13 livestock siting law (s. 93.90, Stats.) for a new or expanded livestock facility. (See
14 s. ATCP 50.54 (1) (Note)).
15

16 2. Require submission of a construction plan, a drawing reflecting design changes made
17 during construction and documentation certifying that the system was installed in accordance
18 with technical standards.

19 **Note:** Unless the ordinance specifies otherwise, a permit would cover activities related to
20 the construction of a facility, and not its operation and use.
21

22 **Note:** Ordinances should provide sufficient time for the local governmental unit to
23 review engineering plans and specifications submitted by applicants. The
24 timelines in s. NR 243.15 (1) (b) and s. ATCP 51.32 are designed to enable permit
25 issuers to thoroughly review today's complex systems for completeness and
26 conformance with applicable standards. Local governmental units should make
27 every effort to coordinate their permit reviews with other government programs
28 conducting similar reviews.
29

30 3. Require a nutrient management plan that complies with s. ATCP 50.04 (3).

31 **Note:** A nutrient management plan, demonstrating that manure can be properly utilized,
32 should be included with a permit application under par. (a). If the county, city,
33 village or town wants to monitor compliance with the nutrient management plan,
34 its ordinance may include monitoring provisions under sub. (2) (g).

1
2 4. Require consistency with state performance standards and prohibitions, and require
3 construction in accordance with technical standards including all of the following:

- 4 a. NRCS technical guide waste storage facility standard 313 (June, 2013).
5 b. NRCS technical guide manure transfer standard 634 (September, 2012).
6 c. Other applicable NRCS technical guide standards.
7 d. Applicable DNR requirements under s. 281.65 (4) (g) 5., Stats.

8 **SECTION 114.** ATPC 50.56 (4) (intro.) and (a) are amended to read:

9 ATPC 50.56 (4) (intro.) ~~ABANDONMENT~~ CLOSURE PROVISIONS. An ordinance adopted
10 under s. 92.16, Stats., may prohibit any person from ~~abandoning~~ closing a manure storage system
11 unless that person does all of the following:

12 (a) Submits ~~an abandonment~~ a closure plan for approval by the county, city, village or
13 town. The ~~abandonment~~ closure plan shall comply with the waste facility closure provisions
14 contained in the NRCS technical guide, closure of waste impoundments standard 360
15 (~~November, 2006~~) (March, 2013).

16 **SECTION 115.** ATPC 50.56 (4) (a) (Note) is created to read:

17 ATPC 50.56 (4) (a) **Note:** The NRCS technical guide standard 360 is on file with the
18 department and the legislative reference bureau.

19
20 **SECTION 116.** ATPC 50.56 (4) (b), (c) and (Note) and (6) are amended to read:

21 ATPC 50.56 (4) (b) Obtains a permit for the ~~abandonment~~ closure.

22 (c) Complies with the approved ~~abandonment~~ closure plan under par. (a).

23 **Note:** An ordinance may apply the ~~abandonment~~ closure requirements under sub. (4) to
24 any manure storage system, regardless of when that system was installed.

25
26 ~~For information on how to obtain~~ Copies of NRCS technical guide standards,
27 including any secondary standards incorporated by reference in those standards,

1 see Appendix G can be obtained by visiting the department website at:
2 <http://datcp.wi.gov/ATCP50> or by calling (608) 224-4622.
3

4 (6) DEPARTMENT REVIEW OVERSIGHT. Before The department may require a county, city,
5 village or town adopts or amends to do either of the following in connection with the
6 administration of an ordinance under s. 92.16, Stats., the county, city, village or town shall
7 submit the:

8 (a) Use a department-approved application for permitting the construction or closure of a
9 manure storage system or structure.

10 (b) Submit a proposed or adopted ordinance to the department. The department shall for
11 review the ordinance for to determine consistency with this chapter. The department may ask the
12 county, city, village or town for information that it needs to perform the review.

13 SECTION 117. ATCP 50.60 (1) (a) (Note) is amended to read:

14 ATCP 50.60 (1) (a) **Note:** See s. 92.15, Stats. A person adversely affected by a local
15 livestock regulation may oppose its adoption at the local level. The person may
16 also challenge a local regulation in court if the person believes that the local
17 governmental unit has violated par. (a) or s. 92.15, Stats. A local governmental
18 unit is responsible for analyzing the legal adequacy of its regulations, and may
19 exercise its own legal judgment in deciding whether to seek state approval under
20 this section.

21
22 A local permit requirement does not, *by itself*, violate par. (a). But permit
23 *conditions* codified in a local regulation must comply with par. (a). In the case of
24 local permit conditions for new and expanding livestock operations, local
25 governmental units must codify more stringent regulation and meet other
26 requirements of s. ATCP 51.10 (3). If a local governmental unit routinely requires
27 permit holders to comply with *uncodified* conservation requirements that exceed
28 state standards, those uncodified requirements may be subject to court challenge
29 under s. 92.15, Stats., and par. (a) as *de facto* regulatory enactments. A local
30 governmental unit may forestall a legal challenge by codifying standard permit
31 conditions and obtaining any necessary state approval under this section. The
32 department will review codified regulations under sub. (2), but will not review
33 individual permits or uncodified permit conditions.

34
35 SECTION 118. Subchapter VIII (Note) of ch. ATCP 50 is created to read:
36

1 ATCP 50, Subch. VIII **Note:** For information on how to obtain NRCS technical guide
2 standards and any other standards required under this subchapter, including any
3 secondary standards incorporated by reference in those standards, a person may
4 visit the department website at: <http://datcp.wi.gov/ATCP50>, or contact the
5 department in writing at the following address:

6
7 Wisconsin Department of Agriculture, Trade and Consumer Protection
8 Division of Agricultural Resource Management
9 P.O. Box 8911
10 Madison, WI 53708-8911

11
12 **SECTION 119.** ATCP 50.61 (title) and (1) are amended to read:

13 ATCP 50.61(title) **General standards for cost-shared practices; pre-approval of cost-**
14 **shared practices.** (1) COST-SHARED PRACTICES MUST COMPLY. ~~Cost-shared~~ Except as
15 authorized under sub. (3), cost-shared practices under this chapter shall comply with applicable
16 standards under this subchapter.

17 **SECTION 120.** ATCP 50.61 (3) and (4) and (Note) are created to read:

18 ATCP 50.61 (3) VOLUNTARY USE OF UPDATED TECHNICAL STANDARDS. The department
19 may authorize a county to provide a cost-share grant for a conservation practice to be
20 implemented under the updated version of a technical standard listed in this subchapter. The
21 county may provide a cost-share grant for the conservation practice using the updated technical
22 standard if all of the following apply:

23 (a) The updated technical standard provides conservation benefits at least as beneficial as
24 the version listed in this subchapter.

25 (b) The updated technical standard has been adopted by NRCS, DNR or the applicable
26 technical standards entity listed in this subchapter.

27 (c) The landowner voluntarily agrees, in writing, to the use of the updated standard to
28 implement the conservation practice.

(4) PRE-APPROVAL OF COST-SHARED PRACTICES. The department may, at any time, require advance approval of any practice cost-shared under this chapter. The department shall provide written notice to affected parties of the cost-shared practices requiring pre-approval by the department and an opportunity for the affected parties to comment on the listed practices. The department shall do all of the following:

(a) Identify the practice for which pre-approval is required.

(b) Establish the conditions under which pre-approval is required and the process for securing the pre-approval.

(c) Provide at least 30 calendar days written notice to each county and other affected grant recipients before requiring pre-approval of the listed cost-shared practice.

Note: The approval authorized under this subsection is in addition to the approval required under s. ATCP 50.40(8) for contracts exceeding \$50,000 in cost-share payments.

The department may provide notice by email or by posting the information on its website.

SECTION 121. ATCP 50.62 (1) (b) 6. is created to read:

ATCP 50.62 (1) (b) 6. A waste transfer system as defined in s. ATCP 50.93 (1).

SECTION 122. ATCP 50.62 (1) (e) 1. and 3. are amended to read:

ATCP 50.62 (1) (e) 1. A milking center waste control system, except for the system component used to transfer the waste to manure storage.

3. A barnyard runoff control system as defined in s. ATCP 50.64 (1), except for the system component used to transfer the waste to manure storage.

SECTION 123. ATCP 50.62 (1) (e) 5. is created to read:

ATCP 50.62 (1) (e) 5. A feed storage system, except for the system component used to transfer leachate and contaminated runoff to manure storage.

1 **SECTION 124.** ATCP 50.62 (3) (d) (Note) and (5) (e) 1. to 5. are amended to read:

2 ATCP 50.62 (3) (d) **Note:** The NRCS technical guide ~~nutrient management standard 590~~
3 ~~(September, 2005) is reproduced in Appendix D is on file with the department and~~
4 ~~the legislative reference bureau. Copies can be obtained by visiting the~~
5 ~~department website at: <http://datcp.wi.gov/ATCP50> or by calling (608) 224-4622.~~
6 The feasibility of applying manure to land under par. (d) will be determined in
7 light of existing topographic, climatological and management factors.

8
9 (5) (e) 1. NRCS technical guide waste storage facility standard 313 ~~(December, 2005)~~
10 ~~(June, 2013).~~

11 2. NRCS technical guide ~~manure~~ waste transfer standard 634 ~~(February, 2007)~~
12 ~~(September, 2012).~~

13 3. NRCS technical guide water well decommissioning standard 351 ~~(May, 2008)~~ (June,
14 2011).

15 4. NRCS technical guide ~~fencing~~ fence standard 382 ~~(November, 1999)~~ (September,
16 2010).

17 5. NRCS technical guide heavy use area protection standard 561 ~~(October, 2007)~~
18 (January, 2011).

19 **SECTION 125.** ATCP 50.62 (5) (e) 6. is renumbered ATCP 50.62 (5) (e) 9.

20 **SECTION 126.** ATCP 50.62 (5) (e) 6. (Note) is repealed.

21 **SECTION 127.** ATCP 50.62 (5) (e) 6. to 8. are created to read:

22 ATCP 50.62 (5) (e) 6. NRCS technical guide pond sealing or lining – flexible membrane
23 standard 521A (September, 2012).

24 7. NRCS technical guide pond sealing or lining-bentonite sealant standard 521C
25 (January, 2011).

26 8. NRCS technical guide pond sealing or lining – compacted clay treatment standard
27 521D (September, 2012)

1 **SECTION 128.** ATCP 50.62 (5) (em) is created to read:

2 ATCP 50.62 (5) (em) The landowner agrees, in writing, to maintain the original storage
3 capacity, measured in days per year, of the cost-shared practice for the 10 year maintenance
4 period of the cost-share contract. If more animals are added during the 10 year maintenance
5 period, all of the following provisions apply:

6 1. The landowner is responsible, at his or her own cost, for construction of any additional
7 storage necessary to maintain the same number of days of storage capacity if the landowner's
8 nutrient management plan cannot be modified to allow for land spreading of the additional
9 manure from the expanded livestock operation.

10 2. The landowner may be required to add manure storage capacity without an offer of
11 cost-sharing, notwithstanding s. ATCP 50.08.

12 **SECTION 129.** ATCP 50.62 (5) (f) is amended to read:

13 ATCP 50.62 (5) (f) The landowner establishes a nutrient management plan, and agrees to
14 comply with that plan and maintain the manure storage system for 10 years unless the landowner
15 discontinues the animal feeding operation ~~is discontinued~~.

16 **SECTION 130.** ATCP 50.62 (5) (f) (Note) is created to read:

17 ATCP 50.62 (5) (f) **Note:** The landowner must provide to the county a completed
18 nutrient management checklist to receive cost-share payment for this practice and
19 must provide an updated checklist for each year of the maintenance period. A
20 person may obtain a copy of the checklist from the county conservation office or
21 by visiting the department website at: <http://datcp.wi.gov/ATCP50>, or by
22 contacting the department in writing at:

23
24 Wisconsin Department of Agriculture, Trade and Consumer Protection
25 Division of Agricultural Resource Management
26 P.O. Box 8911
27 Madison, WI 53708-8911
28 Email: datcpnutrientmanagement@wisconsin.gov
29

30 **SECTION 131.** ATCP 50.63 (5) is amended to read:

ATCP 50.63 (5) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant under s. ATCP 50.40 may not reimburse any costs related to the closure of a manure storage system unless the closure plan complies with NRCS ~~closure of waste impoundments~~facility closure standard 360 ~~(November, 2006)~~(March, 2013).

SECTION 132. ATCP 50.63 (5) (Note) is repealed.

SECTION 133. ATCP 50.64 (1) (a), (b) and (e) are amended to read:

ATCP 50.64 (1) (a) Access ~~roads or cattle crossings~~ road under s. ATCP 50.65.

(b) ~~Animal trails~~ Trails and walkways under s. ATCP 50.66.

(e) Heavy use area protection ~~under s. ATCP 50.74~~ described in NRCS technical guide heavy use area protection standard 561 (January, 2011).

SECTION 134. ATCP 50.64 (1) (v) (Note) is created to read:

ATCP 50.64 (1) (v) **Note:** The NRCS technical guide standard 561 is on file with the department and the legislative reference bureau. Copies can be obtained by visiting the department website at: <http://datcp.wi.gov/ATCP50> or by calling (608) 224-4622.

SECTION 135. ATCP 50.64 (5) (a) and (b) are amended to read:

ATCP 50.64 (5) (a) The system complies with applicable design, construction and maintenance standards under this subchapter and NRCS technical guide heavy use area protection standard 561 (January, 2011).

(b) The landowner agrees to ~~maintain~~ a 10 year maintenance period for the barnyard runoff control system, and the any nutrient management plan if required under par. (c), for 10 years unless the landowner discontinues the animal feeding operation is discontinued.

SECTION 136. ATCP 50.64 (5) (c) and (second Note) are created to read:

ATCP 50.64 (5) (c) The landowner agrees to maintain a nutrient management plan for 10 years if the landowner receives more than \$25,000 in DATCP cost-share payments for the runoff control system.

(second) Note: The NRCS technical guide standard 561 is on file with the department and the legislative reference bureau. Copies can be obtained by visiting the department website at: <http://datcp.wi.gov/ATCP50> or by calling (608) 224-4622.

SECTION 137. ATCP 50.65 (title), (1) and (2) are amended to read:

ATCP 50.65 (title) ~~Access roads and cattle crossings~~ **road**. (1) DEFINITION. In this section, "access road ~~or cattle crossing~~" means a road or pathway ~~which~~ that confines or directs the movement of livestock ~~or~~ farm equipment ~~or vehicular traffic~~, and ~~which~~ that is designed and installed to control surface water runoff, to protect an installed practice, ~~to control livestock access to a stream or waterway, to stabilize a stream crossing,~~ or to prevent erosion.

(2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse the cost of ~~establishing~~ installing conservation practices necessary to prevent water quality impairment that may result from the construction of an access road ~~or cattle crossing~~ if the access road ~~or cattle crossing~~ is needed to comply with applicable state or local regulations.

SECTION 138. ATCP 50.65 (2) (Note) and (2m) are created to read:

ATCP 50.65 (2) **Note:** An eligible practice could be a culvert.

(2m) INELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may not be used to cover the costs for road surfacing and other road construction activities beyond the area necessary to address the soil and water resource problem for which the practice was installed.

SECTION 139. ATCP 50.65 (3) (intro.), (a) and (Note) and (b) are amended to read:

ATCP 50.65 (3) (intro.) DESIGN, CONSTRUCTION AND MAINTENANCE STANDARDS. A cost-share grant under s. ATCP 50.40 may not reimburse the cost of establishing water quality

1 practices associated with an access road or cattle crossing unless all of the following conditions
2 are met:

3 (a) The access road ~~or cattle crossing~~ complies with all of the following that apply:

4 1. NRCS technical guide access road standard 560 (~~August, 2006~~)(September, 2010).

5 2. NRCS technical guide streambank and shoreline protection standard 580 (~~December,~~
6 ~~2005~~)(November, 2009).

7 ~~3. NRCS technical guide fence standard 382 (November 1999).~~

8 **Note:** ~~For information on how to obtain NRCS technical guide standards, including any~~
9 ~~secondary standards incorporated by reference in those standards, When an access~~
10 ~~road crosses a stream, see Appendix Gs. ATCP 50.885.~~

11
12 (b) The landowner agrees to maintain the access road ~~or cattle crossing practice~~ for 10
13 years unless farming operations on the affected land are discontinued or the practice is no longer
14 required to prevent the soil and water resource problem for which the practice was installed.

15 **SECTION 140.** ATCP 50.66 (title), (1), (2), (3) (intro.) and (a) are amended to read:

16 ATCP 50.66 (title) ~~Animal trails~~ **Trails and walkways.** (1) DEFINITION. In this section,
17 “~~animal~~ trail or walkway” means a travel lane to facilitate movement of livestock or people.

18 (2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse the cost of
19 establishing ~~an animal~~ a trail or walkway when necessary to comply with state or local
20 regulations.

21 (3) (intro.) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant under s.
22 ATCP 50.40 may not reimburse the cost of establishing ~~an animal~~ a trail or walkway unless all of
23 the following conditions are met:

24 (a) The ~~animal~~ trail or walkway complies with all of the following that apply:

1 1. NRCS technical guide animal trails and walkways standard 575 (~~August,~~
2 ~~2006~~)(November, 2012).

3 2. NRCS technical guide streambank and shoreline protection standard 580 (~~December,~~
4 ~~2005~~)(November, 2009).

5 3. NRCS technical guide fence standard 382 (~~November, 1999~~)(September, 2010).

6 **SECTION 141.** ATCP 50.66 (3) (a) 3. (Note) is renumbered ATCP 50.66 (3) (a) 4. (Note)
7 and amended to read:

8 ATCP 50.66 (3) (a) 4. **Note:** ~~For information on how to obtain~~ When an access road
9 crosses a stream, see s. ATCP 50.885.

10 ~~NRCS technical guide standards, including any secondary standards incorporated~~
11 ~~by reference in those standards see Appendix G.~~

12
13
14 **SECTION 142.** ATCP 50.66 (3) (a) 4. is created to read:

15 ATCP 50.66 (3) (a) 4. NRCS technical guide trails and walkways standard 568
16 (December, 2010).

17 **SECTION 143.** ATCP 50.66 (3) (b) is amended to read:

18 ATCP 50.66 (3) (b) The landowner agrees to maintain the animal trail or walkway for 10
19 years unless farming operations on the affected land are discontinued or the practice is no longer
20 required to prevent the soil and water resource problem for which the practice was installed.

21 **SECTION 144.** ATCP 50.67 (3) (a), (b) and (c) are amended to read:

22 ATCP 50.67 (3) (a) NRCS technical guide contour farming standard 330 (~~May,~~
23 ~~2002~~)(November, 2008).

24 (b) NRCS technical guide obstruction removal standard 500 (~~May, 2002~~)(December,
25 2010).

(c) NRCS technical guide ~~standard wildlife upland~~ wildlife habitat management standard 645 (~~July, 2000~~) (January, 2013), if habitat management is used to mitigate the loss of habitat resulting from the installation of contour farming.

SECTION 145. ATCP 50.67 (3) (c) (Note) is repealed.

SECTION 146. ATCP 50.68 (4) (a) is amended to read:

ATCP 50.68 (4) (a) The cropland cover meets NRCS technical guide cover crop standard 340 (~~June, 2002~~) (February, 2012).

SECTION 147. ATCP 50.68 (4) (a) (Note) is repealed.

SECTION 148. ATCP 50.69 (1) and (4) (a) 1. to 7. are amended to read:

ATCP 50.69 (1) DEFINITION. In this section, “critical area stabilization” means planting suitable vegetation on erodible areas such as steep slopes, and gullies and roadsides, so as to reduce soil erosion or pollution from agricultural nonpoint sources. “Critical area stabilization” may also include treating areas that drain into bedrock crevices, openings or sinkholes.

(4) (a) 1. NRCS technical guide critical area planting standard 342 (~~June, 2002~~) (January, 2013).

2. NRCS technical guide fence standard 382 (~~November, 1999~~) (September, 2010).

3. NRCS technical guide field border standard 386 (~~May, 2002~~) (November, 2009).

4. NRCS technical guide ~~use exclusion~~ access control standard 472 (~~June, 2002~~) (October, 2008).

5. NRCS technical guide mulching standard 484 (~~June, 2002~~) (March, 2013).

6. NRCS technical guide tree/shrub establishment standard 612 (~~April, 2003~~) (July, 2011).

1 7. NRCS technical guide karst sinkhole treatment standard 725527 (~~March,~~
2 ~~2000~~)(December, 2010).

3 **SECTION 149.** ATCP 50.69 (4) (a) 7. (Note) is repealed.

4 **SECTION 150.** ATCP 50.69 (4) (b) is amended to read:

5 ATCP 50.69 (4) (b) The landowner agrees to maintain the critical area stabilization
6 practice for 10 years unless farming operations on the affected land are discontinued or the
7 practice is no longer required to prevent the soil and water resource problem for which the
8 practice was installed.

9 **SECTION 151.** ATCP 50.70 (4) (b) 1. to 9. are amended to read:

10 ATCP 50.70 (4) (b) 1. NRCS technical guide critical area planting standard 342 (~~June,~~
11 ~~2002~~)(January, 2013).

12 2. NRCS technical guide diversion standard 362 (~~August, 2006~~)(December, 2010).

13 3. NRCS technical guide fence standard 382 (~~November, 1999~~) (September, 2010).

14 4. NRCS technical guide grassed waterway standard 412 (~~June, 2008~~) (January, 2011).

15 5. NRCS technical guide lined waterway or outlet standard 468 (~~August, 2006~~)(March,
16 2013).

17 6. NRCS technical guide obstruction removal standard 500 (~~May, 2002~~) (December,
18 2010).

19 7. NRCS technical guide subsurface drain standard 606 (~~June, 2002~~) (October, 2012).

20 8. NRCS technical guide underground outlet standard 620 (~~May, 2002~~) (January, 2011).

21 9. NRCS technical guide ~~wildlife~~ upland wildlife habitat management standard 645
22 (~~July, 2000~~)(January, 2013).

23 **SECTION 152.** ATCP 50.70 (4) (b) 9. (Note) is repealed.

1 **SECTION 153.** ATCP 50.705 is created to read:

2 ATCP 50.705 **Feed storage runoff control systems.** (1) DEFINITIONS. In this section:

3 (a) "Feed storage area" means an area used to store livestock feed including corn silage,
4 haylage, and industrial by-products including distillers grain, brewers grain, candy, pizza crust,
5 bakery waste, cotton seed, soybean meal, animal fats, blood meal, fish meal, cannery waste, beet
6 pulp, citrus pulp, soy hulls, corn middlings, whey, potatoes, and grocery store vegetables. The
7 feed storage area includes the area up to the outside edge of the surface on which the feed is
8 stored and any apron area.

9 (b) "Feed storage runoff control system" means a system of facilities or practices to
10 contain, divert, retard, treat or otherwise control the discharge of leachate and contaminated
11 runoff from livestock feed storage areas.

12 (2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse any of the
13 following costs related to a feed storage runoff control system:

14 (a) Costs for diversion of clean water from the storage area.

15 (b) Costs for conduits, permanent pumps and related equipment required to collect,
16 transfer and store discharges of leachate and contaminated runoff including subsurface and
17 surface discharges.

18 (c) Costs for preparation of a site for a runoff treatment area and establishment of
19 permanent vegetative cover.

20 (3) INELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may not reimburse any
21 of the following costs related to a feed storage runoff control system:

22 (a) Costs for any system, component or practice that is not required to correct an
23 identified water pollution hazard.

1 (b) Buildings or modifications to buildings.

2 (c) Portable equipment to pump or spread feed storage runoff onto land or to incorporate
3 those wastes into land.

4 (d) A non-permanent storage area allowed under NRCS technical guide waste treatment
5 standard 629 (March, 2013).

6 (e) Areas used to store feeds considered dry, at 40% moisture or less, if the storage areas
7 are protected from precipitation.

8 (4) FEED STORAGE RUNOFF CONTROL SYSTEMS; GRANT DISQUALIFICATION. A county land
9 conservation committee may not award a cost-share grant for a feed storage runoff control
10 system if any of the following apply:

11 (a) The landowner intentionally aggravated a pollution discharge from the animal
12 feeding operation.

13 (b) The landowner could have prevented the discharge of pollutants through improved
14 management practices at nominal cost.

15 (c) The landowner holds, or is required to apply for, a Wisconsin pollution discharge
16 elimination system permit for the animal feeding operation under s. 283.31, Stats.

17 (d) The landowner could have prevented the discharge of pollutants by complying with
18 an operations and maintenance plan previously agreed upon by the landowner and one of the
19 following:

20 1. The department.

21 2. The county land conservation committee.

22 3. DNR.

23 4. NRCS.

(5) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant may not reimburse any costs related to a feed storage runoff control system unless all of the following conditions are met:

(a) The system complies with all of the following that apply:

1. NRCS technical guide waste storage facility standard 313 (June, 2013).
2. NRCS technical guide waste treatment standard 629 (March, 2013).
3. NRCS technical guide waste transfer standard 634 (September, 2012).
4. NRCS technical guide vegetated treatment area standard 635 (September, 2012).
5. NRCS technical guide wetland restoration standard 657 (September, 2000).
6. NRCS technical guide nutrient management standard 590 (September, 2005).
7. NRCS technical guide diversion standard 362 (December, 2010).
8. Other standards specified by the department.

Note: Additional regulatory requirements may apply for runoff control systems including s. NR 213.13 requirements for sweet corn silage stacks of greater than 150 tons, and s. ATCP 51.20 (3) requirements for livestock facilities required to obtain a siting permit.

(b) The landowner agrees to a 10 year maintenance period for a feed storage runoff control system, and a nutrient management plan, if runoff is collected from a feed storage area over 1 acre in size and the runoff is not transferred to a manure storage system. The maintenance period does not apply if the animal feeding operation is discontinued.

Note: To comply with the process wastewater performance standard in s. NR 151.055 for feed storage, landowners may install conservation practices or make management changes, without making significant structural changes, as long as the landowner reduces the level of discharge below the "significant" threshold, as determined in s. NR 151.055 (3). However, when state cost-share funds are available, landowners should be provided cost-sharing to install the suite of practices that both correct and prevent discharges, ensuring adequate protection of groundwater and surface water. Farms with small storage areas have lower cost options to meet the technical standards.

1
2 **SECTION 154.** ATCP 50.71 (1) and (3) (b) 1. to 3. are amended to read:

3 ATCP 50.71 (1) DEFINITION. In this section, “field windbreak” means a strip or belt of
4 trees, shrubs or grasses established or ~~restored~~renovated within or adjacent to a field, so as to
5 control soil erosion by reducing wind velocities at the land surface.

6 (3) (b) 1. NRCS technical guide fence standard 382 (~~November, 1999~~)(September,
7 2010).

8 2. NRCS technical guide ~~windbreak/shelterbreak~~ windbreak/shelterbelt establishment
9 standard 380 (~~June, 2002~~)(November, 2011).

10 3. NRCS technical guide ~~use-exclusion~~ access control standard 472 (~~June,~~
11 ~~2002~~)(October, 2008).

12 **SECTION 155.** ATCP 50.71 (3) (b) 3. (Note) is repealed.

13 **SECTION 156.** ATCP 50.71 (3) (b) 4. is created to read:

14 ATCP 50.71 (3) (b) 4. NRCS technical guide windbreak/shelterbelt renovation standard
15 650 (January, 2013).

16 **SECTION 157.** ATCP 50.72 (3) (a) 1. to 3., and 5. to 7. are amended to read:

17 ATCP 50.72 (3) (a) 1. NRCS technical guide critical area planting standard 342 (~~June,~~
18 ~~2002~~)(January, 2013).

19 2. NRCS technical guide fence standard 382 (~~November, 1999~~)(September, 2010).

20 3. NRCS technical guide field border standard 386 (~~May, 2002~~)(November, 2009).

21 5. NRCS technical guide ~~use-exclusion~~ access control standard 472 (~~June, 2002~~)
22 (October, 2008).

23 6. NRCS technical guide mulching standard 484 (~~June, 2002~~)(March, 2013).

7. NRCS technical guide riparian forest buffer standard 391 (~~January, 2001~~)(January, 2013).

SECTION 158. ATCP 50.72 (3) (a) 7. (Note) is repealed.

SECTION 159. ATCP 50.73 (3) (d) 1. to 12. are amended to read:

ATCP 50.73 (3) (d) 1. NRCS technical guide critical area planting standard 342 (~~June, 2002~~)(January, 2013).

2. NRCS technical guide sediment basin standard 350 (~~August, 2008~~)(December, 2010).

3. NRCS technical guide diversion standard 362 (~~August, 2006~~)(December, 2010).

4. NRCS technical guide fence standard 382 (~~November, 1999~~)(September, 2010).

5. NRCS technical guide obstruction removal standard 500 (~~May, 2002~~) (December, 2010).

6. NRCS technical guide grade stabilization structure standard 410 (~~July, 2001~~) (January, 2010).

7. NRCS technical guide grassed waterway standard 412 (~~June, 2008~~) (January, 2011).

8. NRCS technical guide lined waterway or outlet standard 468 (~~August, 2006~~)(March, 2013).

9. NRCS technical guide mulching standard 484 (~~June, 2002~~)(March, 2013).

10. NRCS technical guide subsurface drain standard 606 (~~June, 2002~~)(October, 2012).

11. NRCS technical guide underground outlet standard 620 (~~May, 2002~~) (January, 2011).

12. NRCS technical guide water and sediment control basin standard 638 (~~July, 2001~~) (January, 2011).

SECTION 160. ATCP 50.73 (3) (d) 12. (Note) is repealed.

SECTION 161. ATCP 50.74 is repealed.

1 **SECTION 162.** ATCP 50.75 (4) (a) 1. and 2. are amended to read:

2 ATCP 50.75 (4) (a) 1. NRCS technical guide fence standard 382 (~~November,~~
3 ~~1999~~)(September, 2010).

4 2. NRCS technical guide ~~use exclusion~~ access control standard 472 (~~June,~~
5 ~~2002~~)(October, 2008).

6 **SECTION 163.** ATCP 50.75 (4) (a) 2. (Note) is repealed.

7 **SECTION 164.** ATCP 50.76 (5) (a) 2. to 4. are amended to read:

8 ATCP 50.76 (5) (a) 2. NRCS technical guide watering facility standard 614 (~~April,~~
9 ~~2002~~)(May, 2011).

10 3. NRCS technical guide water well standard 642 (~~May, 2005~~)(April, 2011).

11 4. NRCS technical guide livestock pipeline standard 516 (~~April, 2002~~)(October, 2012).

12 **SECTION 165.** ATCP 50.76 (5) (a) 5. (Note) is repealed.

13 **SECTION 166.** ATCP 50.76 (5) (a) 6. and 7. are created to read:

14 ATCP 50.76 (5) (a) 6. NRCS technical guide heavy use area protection standard 561
15 (January, 2011).

16 7. NRCS technical guide pumping plant standard 533 (July, 2011).

17 **SECTION 167.** ATCP 50.77 (4) (a) 1. and (Note), and 2. to 4. are amended to read:

18 ATCP 50.77 (4) (a) 1. ~~The University of Wisconsin-Extension pollution control guide~~
19 ~~for milking~~ Milking center waste water management, UWEX publication A3592 (July, 1994)
20 wastewater guidelines, a companion document to Wisconsin NRCS standard 629 (June, 2009).

21 **Note:** ~~The UW-extension pollution control guide for~~ Copies of milking center waste
22 ~~water management wastewater guidelines, a companion document to Wisconsin~~
23 NRCS standard 629 (June, 2009) is are on file with the department and the
24 legislative reference bureau. ~~Copies may be purchased from the department or the~~
25 University of Wisconsin-Extension (UWEX Pub. No. A3592). For further
26 information, ~~see Appendix G and can be obtained by visiting the department~~

website at: <http://datcp.wi.gov/ATCP50> or by calling (608) 224-4622. For printed copies contact the Wisconsin state NRCS office at (608) 662-4422.

2. NRCS technical guide waste treatment standard 629 (~~August, 2008~~)(March, 2013)

3. NRCS technical guide waste storage facility standard 313 (~~December, 2005~~)(June, 2013).

4. NRCS technical guide ~~manure~~ waste transfer standard 634 (~~February, 2007~~) (September, 2012).

SECTION 168. ATCP 50.77 (4) (a) 5. (Note) is repealed.

SECTION 169. ATCP 50.77 (4) (a) 6. and 7. are created to read:

ATCP 50.77 (4) (a) 6. NRCS technical guide vegetated treatment area standard 635 (September, 2012).

7. NRCS technical guide constructed wetland standard 656 (September, 2012).

SECTION 170. ATCP 50.78 (3) (a) (Note) is amended to read:

ATCP 50.78 (3) (a) **Note:** The NRCS technical guide nutrient management standard 590 (September, 2005) ~~is reproduced in Appendix D~~ can be obtained by visiting the department website at: <http://datcp.wi.gov/ATCP50> or by calling (608) 224-4622.

SECTION 171. ATCP 50.79 (2) (intro.) and (3) (a) 1., and (b) are amended to read:

ATCP 50.79 (2) (intro.) **ELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may reimburse costs for pesticide management described in a pesticide management plan, if required, or described in the plan for the design of a pesticide structure. A cost-share grant may reimburse any of the following costs related to pesticide management:

(3) (a) 1. NRCS technical guide integrated pest management standard 595 (~~June, 2003~~)(January, 2013).

(b) The landowner agrees to maintain the pesticide management ~~practise~~ plan, if required, for each cropping season for which cost-sharing is provided the duration specified in

1 the cost-share contract, and to maintain any structures for 10 years unless farming operations on
2 the affected land are discontinued.

3 **SECTION 172.** ATCP 50.80 (3) (a) 1. to 6., 7. (Note) and 8. are amended to read:

4 ATCP 50.80 (3) (a) 1. NRCS technical guide critical area planting standard 342 (~~June,~~
5 ~~2002~~)(January, 2013).

6 2. NRCS technical guide ~~pasture and hayland~~ forage and biomass planting standard 512
7 (~~June, 2002~~)(January, 2013).

8 3. NRCS technical guide ~~use exclusion~~ access control standard 472 (~~June, 2002~~)
9 (October, 2008).

10 4. NRCS technical guide streambank and shoreline protection standard 580 (~~December,~~
11 ~~2005~~)(November, 2009).

12 5. NRCS technical guide heavy use area protection standard 561 (~~August,~~
13 ~~2008~~)(January, 2011).

14 6. NRCS technical guide prescribed grazing standard (managed grazing-Wisconsin) 528
15 (~~December, 2005~~)(December, 2008).

16 7. **Note:** Copies of “Pastures for profit: a guide to rotational grazing” are on file with the
17 department and the legislative reference bureau. Copies may be ~~purchased from~~
18 ~~the department or obtained~~ from the University of Wisconsin-Extension (UWEX
19 Pub. No. A3529). ~~For further information, see Appendix G.~~

20
21 8. NRCS technical guide animal trails and walkways standard 575 (~~August,~~
22 ~~2006~~)(November, 2012).

23 **SECTION 173.** ATCP 50.80 (3) (a) 9. (Note) is repealed.

24 **SECTION 174.** ATCP 50.82 (4) (c) 1. to 3. are amended to read:

25 ATCP 50.82 (4) (c) 1. NRCS technical guide residue and tillage management-no till/strip
26 till/direct seed standard 329 (~~October, 2006~~)(January, 2012).

2. NRCS technical guide residue and tillage management-mulch till standard 345
(~~October, 2006~~) (January, 2012).

3. NRCS technical guide residue management-seasonal standard 344 (~~October, 2006~~)
(January, 2012).

SECTION 175. ATCP 50.82 (4) (c) 3. (Note) is repealed.

SECTION 176. ATCP 50.82 (4) (c) 4. is created to read:

ATCP 50.82 (4) (c) 4. NRCS technical guide residue and tillage management-ridge till
standard 346 (January, 2012).

SECTION 177. ATCP 50.83 (3) (a) 1. to 3., 5. to 7. and 9. are amended to read:

ATCP 50.83 (3) (a) 1. NRCS technical guide critical area planting standard 342 (~~June,~~
~~2002~~)(January, 2013).

2. NRCS technical guide fence standard 382 (~~November, 1999~~)(September, 2010).

3. NRCS technical guide field border standard 386 (~~May, 2002~~)(November, 2009).

5. NRCS technical guide ~~use-exclusion~~ access control standard 472 (~~June, 2002~~)
(October, 2008).

6. NRCS technical guide mulching standard 484 (~~June, 2002~~) (March, 2013).

7. NRCS technical guide riparian forest buffer standard 391 (~~January, 2001~~)(January,
2013).

9. NRCS technical guide ~~wildlife~~ upland wildlife habitat management standard 645
(~~July, 2000~~)(January, 2013).

SECTION 178. ATCP 50.83 (3) (a) 9. (Note) is repealed.

SECTION 179. ATCP 50.84 (5) (a) is amended to read:

ATCP 50.84 (5) (a) The roof complies with ~~the american society of civil engineers,~~
~~“Minimum Design Loads for Buildings and Other Structures,” ASCE/SEI 7-05 (2006) NRCS~~
~~technical guide roofs and covers standard 367 (October, 2011).~~

SECTION 180. ATCP 50.84 (5) (a) (Note) is repealed.

SECTION 181. ATCP 50.85 (4) (a) 1. and 2. are amended to read:

ATCP 50.85 (4) (a) 1. NRCS technical guide roof runoff structure standard 558 ~~(January,~~
~~2008)(September, 2010).~~

2. NRCS technical guide underground outlet standard 620 ~~(May, 2002)(January, 2011).~~

SECTION 182. ATCP 50.85 (4) (a) 2. (Note) is repealed.

SECTION 183. ATCP 50.86 (4) (b) 1. to 8. and (first Note) are amended to read:

ATCP 50.86 (4) (b) 1. NRCS technical guide critical area planting standard 342 ~~(June,~~
~~2002)(January, 2013).~~

2. NRCS technical guide sediment basin standard 350 ~~(August, 2008)(December, 2010).~~

3. NRCS technical guide ~~manure-waste~~ transfer standard 634 ~~(February,~~
~~2007)(September, 2012).~~

4. NRCS technical guide fence standard 382 ~~(November, 1999)(September, 2010).~~

5. NRCS technical guide vegetated treatment area standard 635 ~~(August, 2008)~~
~~(September, 2012).~~

6. NRCS technical guide heavy use area protection standard 561 ~~(August, 2008)~~
~~(January, 2011).~~

7. NRCS technical guide underground outlet standard 620 ~~(May, 2002) (January, 2011).~~

8. Wisconsin DNR conservation practice standard 1001, wet detention basin ~~(June,~~
~~1999) (October, 2007).~~

(first) **Note:** Copies of the DNR conservation practice standard 1001 are on file with the department and the legislative reference bureau. Copies may be obtained from DNR or the department. For more information, see Appendix G by visiting the DNR website at: <http://dnr.wi.gov/topic/stormwater/standards/index.html>.

SECTION 184. ATCP 50.86 (4) (b) 8. (second Note) is repealed.

SECTION 185. ATCP 50.87 (4) (a) 1. to 3. are amended to read:

ATCP 50.87 (4) (a) 1. NRCS technical guide karst sinkhole treatment standard 725 ~~(March, 2000)~~(December, 2010).

2. NRCS technical guide diversion standard 362 ~~(August, 2006)~~(December, 2010).

3. NRCS technical guide grassed waterway standard 412 ~~(June, 2008)~~(January, 2011).

SECTION 186. ATCP 50.87 (4) (a) 3. (Note) is repealed.

SECTION 187. ATCP 50.88 (title) and (1) are amended to read:

ATCP 50.88 (title) **Streambank ~~and~~or shoreline protection.** (1) DEFINITION. In this section, “streambank ~~and~~or shoreline protection” means ~~using vegetation or structures~~ waterbody-specific treatments used to stabilize and protect the eroding banks of streams or constructed channels, and shorelines of lakes, reservoirs or estuaries, or excavated channels ~~against scour and erosion, or to~~ The practice is designed and installed to provide water quality benefits or control soil erosion including degradation from livestock and may protect fish habitat and water quality from degradation due to livestock access as an incidental benefit. Streambank or shoreline protection may include any of the following components:

SECTION 188. ATCP 50.88 (1) (a) to (h) are created to read:

ATCP 50.88 (1) (a) Critical area stabilization under s. ATCP 50.69.

(b) Diversions under s. ATCP 50.70.

(c) Grade stabilization under s. ATCP 50.73.

(d) Riparian buffers under s. ATCP 50.83.

1 (e) Roof runoff systems under s. ATCP 50.85.

2 (f) Subsurface drain under s. ATCP 50.90.

3 (g) Underground outlet under s. ATCP 50.92.

4 (h) Wetland development or restoration under s. ATCP 50.98.

5 **SECTION 189.** ATCP 50.88 (2) (intro.) is amended to read:

6 ATCP 50.88 (2) (intro.) **ELIGIBLE COSTS.** A cost-share grant under s. ATCP 50.40 may
7 reimburse any of the following costs related to streambank-and or shoreline protection:

8 **SECTION 190.** ATCP 50.88 (2) (a) is repealed.

9 **SECTION 191.** ATCP 50.88 (2) (b) is renumbered ATCP 50.88 (2) (a) and amended to
10 read:

11 ATCP 50.88 (2) (a) Costs to install new soil bioengineering and structural treatments
12 including rock riprap. Wood chunks, unsorted demolition material, brick, plaster, blacktop and
13 other materials that may produce leachates may not be used as riprap. A cost-share grant may
14 reimburse costs for rock and timber riprap used to establish fish habitat, in combination with the
15 restoration of a riparian buffer and as part of a streambank-and or shoreline protection scheme,
16 provided that reimbursement for fish habitat does not exceed 25% of the cost-share grant.

17 **SECTION 192.** ATCP 50.88 (2) (c) is renumbered ATCP 50.88 (2) (b).

18 **SECTION 193.** ATCP 50.88 (2) (c) (Note) is created to read:

19 ATCP 50.88 (2) (c) **Note:** Additional cost-shared practices may be combined with this
20 practice to fully address the environmental problems at the site and protect the
21 natural resource. Where appropriate, additional practices may include fencing (s.
22 ATCP 50.75) to exclude livestock, water pumps or other facilities (s. ATCP
23 50.76) if this is the most cost-effective way to deliver water to livestock excluded
24 from access to surface water, or stream crossings (s. ATCP 50.885) to minimize
25 disturbance at points of entry to a stream.

26
27 **SECTION 194.** ATCP 50.88 (2) (d) is repealed.

1 **SECTION 195.** ATCP 50.88 (2) (e) is renumbered ATCP 50.88 (2) (c).

2 **SECTION 196.** ATCP 50.88 (2) (f) is repealed:

3 **SECTION 197.** ATCP 50.88 (2m) is created to read:

4 ATCP 50.88 (2m) **INELIGIBLE COSTS.** Except for violations of this chapter or ch. NR
5 151, a cost-share grant under s. ATCP 50.40 may not reimburse costs related to mitigation or
6 correction of a violation of state or local laws.

7 **SECTION 198.** ATCP 50.88 (3) (a) 1. to 5. are amended to read:

8 ATCP 50.88 (3) (a) 1. NRCS technical guide critical area planting standard 342 (~~June,~~
9 ~~2002~~)(January, 2013).

10 2. NRCS technical guide fence standard 382 (~~November, 1999~~)(September, 2010).

11 3. NRCS technical guide streambank and shoreline protection standard 580 (~~December,~~
12 ~~2005~~)(November, 2009).

13 4. NRCS technical guide tree/shrub establishment standard 612 (~~April, 2003~~)(July,
14 2011).

15 5. NRCS technical guide heavy use area protection standard 561 (~~August,~~
16 ~~2008~~)(January, 2011).

17 **SECTION 199.** ATCP 50.88 (3) (a) 5. (Note) is repealed.

18 **SECTION 200.** ATCP 50.88 (3) (b) is repealed and recreated to read:

19 ATCP 50.88 (3) (b) Cost-share recipients shall obtain all required DNR permits before
20 installing any practices. The department may require documentation that permits have been
21 obtained before it makes reimbursements under this chapter.

22 **SECTION 201.** ATCP 50.88 (3) (c) is amended to read:

1 ATCP 50.88 (3) (c) The landowner agrees to maintain the streambank or shoreline
2 protection for 10 years unless ~~farming operations on the affected land are discontinued~~the
3 practice is no longer required to prevent the soil and water resource problem for which the
4 practice was installed.

5 **SECTION 202.** ATCP 50.885 is created to read:

6 ATCP 50.885 **Stream Crossing.** (1) DEFINITION. In this section, “stream crossing”
7 means a road or pathway which confines or directs the movement of livestock, farm equipment
8 or vehicular traffic over a stream, and which is designed and installed to improve water quality,
9 reduce erosion, protect an installed practice or control livestock access to a stream.

10 (2) ELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may reimburse any of the
11 following costs related to a stream crossing:

12 (a) The costs of constructing a culvert, ford or other allowed stream crossing structure
13 other than a bridge.

14 (b) The costs of installing conservation practices necessary to limit water quality
15 impairment from a stream crossing.

16 (3) INELIGIBLE COSTS. A cost-share grant under s. ATCP 50.40 may not reimburse for
17 the costs of a stream crossing if the traffic can be re-directed along another route that would not
18 result in the same water quality impairment.

19 (4) DESIGN, CONSTRUCTION AND MAINTENANCE. A cost-share grant under s. ATCP 50.40
20 may not reimburse the cost of establishing a stream crossing unless all of the following
21 conditions are met:

22 (a) The stream crossing complies with all of the following that apply:

23 1. NRCS technical guide access road standard 560 (September, 2010).

2. NRCS technical guide streambank and shoreline protection standard 580 (November, 2009).

3. NRCS technical guide fence standard 382 (September, 2010).

4. NRCS technical guide stream crossing standard 578 (March, 2013).

(b) The landowner agrees to maintain the stream crossing for 10 years unless the farming operations on the affected land are discontinued or the practice is no longer required to prevent the soil and water resource problem for which the practice was installed.

SECTION 203. ATCP 50.89 (3) (b) 1. and 2. are amended to read:

ATCP 50.89 (3) (b) 1. NRCS technical guide obstruction removal standard 500 (~~May, 2002~~)(December, 2010).

2. NRCS technical guide stripcropping standard 585 (~~June, 2002~~)(April, 2009).

SECTION 204. ATCP 50.89 (3) (b) 3., 4. and 4. (Note) are repealed.

SECTION 205. ATCP 50.90 (3) (b) 1. and 2. are amended to read:

ATCP 50.90 (3) (b) 1. NRCS technical guide subsurface drain standard 606 (~~June, 2002~~)(October, 2012).

2. NRCS technical guide underground outlet standard 620 (~~May, 2002~~)(January, 2011).

SECTION 206. ATCP 50.90 (3) (b) 2. (Note) is repealed.

SECTION 207. ATCP 50.91 (3) (b) 1. to 8. are amended to read:

ATCP 50.91 (3) (b) 1. NRCS technical guide critical area planting standard 342 (~~June, 2002~~)(January, 2013).

2. NRCS technical guide grassed waterway standard 412 (~~June, 2008~~)(January, 2011).

3. NRCS technical guide lined waterway or outlet standard 468 (~~August, 2006~~)(March, 2013).

1 4. NRCS technical guide obstruction removal standard 500 (~~May, 2002~~)(December,
2 2010).

3 5. NRCS technical guide terrace standard 600 (~~June, 2002~~)(December, 2010).

4 6. NRCS technical guide subsurface drain standard 606 (~~June, 2002~~)(October, 2012).

5 7. NRCS technical guide underground outlet standard 620 (~~May, 2002~~)(January, 2011).

6 8. NRCS technical guide water and sediment control basin standard 638 (~~July,~~
7 ~~2001~~)(January, 2011).

8 **SECTION 208.** ATCP 50.91 (3) (b) 8. (Note) is repealed.

9 **SECTION 209.** ATCP 50.92 (3) (b) 1. and 2. are amended to read:

10 ATCP 50.92 (3) (b) 1. NRCS technical guide subsurface drain standard 606 (~~June,~~
11 ~~2002~~)(October, 2012).

12 2. NRCS technical guide underground outlet standard 620 (~~May, 2002~~)(January, 2011).

13 **SECTION 210.** ATCP 50.92 (3) (b)2. (Note) is repealed.

14 **SECTION 211.** ATCP 50.93 (4) (a) 1. and 2. are amended to read:

15 ATCP 50.93 (4) (a) 1. NRCS technical guide ~~manure~~waste transfer standard 634
16 (~~February, 2007~~)(September, 2012).

17 2. NRCS technical guide underground outlet standard 620 (~~May, 2002~~)(January, 2011).

18 **SECTION 212.** ATCP 50.93 (4) (a) 2. (Note) is repealed.

19 **SECTION 213.** ATCP 50.94 (3) (a) 1. to 5. are amended to read:

20 ATCP 50.94 (3) (a) 1. NRCS technical guide critical area planting standard 342 (~~June,~~
21 ~~2002~~)(January, 2013).

22 2. NRCS technical guide fence standard 382 (~~November, 1999~~)(September, 2010).

1 3. NRCS technical guide ~~use exclusion~~ access control standard 472 (~~June,~~
2 ~~2002~~)(October, 2008).

3 4. NRCS technical guide mulching standard 484 (~~June, 2002~~)(March, 2013).

4 5. NRCS technical guide vegetated treatment area standard 635 (~~August,~~
5 ~~2008~~)(September, 2012).

6 **SECTION 214.** ATCP 50.94 (3) (a) 5. (Note) is repealed.

7 **SECTION 215.** ATCP 50.95 (3) (a) 1. to 4. are amended to read:

8 ATCP 50.95 (3) (a) 1. NRCS technical guide critical area planting standard 342 (~~June,~~
9 ~~2002~~)(January, 2013).

10 2. NRCS technical guide fence standard 382 (~~November, 1999~~)
11 (September, 2010).

12 3. NRCS technical guide water and sediment control basin standard 638 (~~July,~~
13 ~~2004~~)(January, 2011).

14 4. NRCS technical guide underground outlet standard 620 (~~May, 2002~~) (January, 2011).

15 **SECTION 216.** ATCP 50.95 (3) (a) 4. (Note) is repealed.

16 **SECTION 217.** ATCP 50.96 (3) (b) 1. to 7. are amended to read:

17 ATCP 50.96 (3) (b) 1. NRCS technical guide critical area planting standard 342 (~~June,~~
18 ~~2002~~)(January, 2013).

19 2. NRCS technical guide fence standard 382 (~~November, 1999~~)(September, 2010).

20 3. NRCS technical guide grassed waterway standard 412 (~~June, 2008~~)(January, 2011).

21 4. NRCS technical guide mulching standard 484 (~~June, 2002~~)(March, 2013).

22 5. NRCS technical guide obstruction removal standard 500 (~~May, 2002~~)(December,
23 2010).

1 6. NRCS technical guide subsurface drain standard 606 ~~(June, 2002)~~(October, 2012).

2 7. NRCS technical guide underground outlet standard 620 ~~(May, 2002)~~(January, 2011).

3 **SECTION 218.** ATCP 50.96 (3) (b) 7. (Note) is repealed.

4 **SECTION 219.** ATCP 50.96 (3) (b) 8. is created to read:

5 ATCP 50.96 (3) (b) 8. NRCS technical guide lined waterway or outlet standard 468
6 (March, 2013).

7 **SECTION 220.** ATCP 50.97 (3) (a) is amended to read:

8 ATCP 50.97 (3) (a) NRCS technical guide water well decommissioning standard 351
9 ~~(May, 2008)~~(June, 2011).

10 **SECTION 221.** ATCP 50.97 (3) (b) (Note) is repealed.

11 **SECTION 222.** ATCP 50.98 (3) (a) (Note) is repealed.

12 **SECTION 223.** Ch. ATCP 50, Appendices A to G are repealed.

13 **SECTION 224. EFFECTIVE DATE AND INITIAL APPLICABILITY.** This rule takes effect on
14 the first day of the third month following publication in the Wisconsin administrative register, as
15 provided under s. 227.22 (2), Stats.

Dated this _____ day of _____, 2013.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By: _____
Ben Brancel
Secretary

Appendix A

RULEMAKING HEARING Public Hearing Appearances and Written Testimony

Rule Subject: Soil and Water Resource Management
Adm. Code Reference: ATCP 50, Wis. Adm. Code
Rules Clearinghouse #: 13-016
DATCP Docket # 11-R-01

Public Hearing Attendance

Date	City/Hearing	Afternoon Attendance	Evening Attendance	Total
March 26, 2013	Eau Claire	10	3	13
March 27, 2013	Appleton	12	2	14
March 28, 2013	Tomahawk	6	0	6
April 3, 2013	Platteville	10	1	11
April 4, 2013	Madison	12	0	12
	Total	50	6	56

Public Hearing Attendance Cards-Position on Rule

City/Hearing	Support	Oppose	Part of Each	No Position	Total
Eau Claire	3	0	8	2	13
Appleton	2	0	5	7	14
Tomahawk	1	0	5	0	6
Platteville	1	4	3	3	11
Madison	4	1	4	3	12
Total	11	5	25	15	56

Written Testimony Received During Comment Period

Person	Organization
Tom Fratt	Ashland County
Ben Dufford	Bayfield County
Bob Ambrosius	Ambrosius Farms
Dave Ferris	Burnett County
Jordan Lamb	WI Cattlemen's Association

Jordan Lamb	WI State Cranberry Growers Association
Dan Brick	Brickstead Dairy
Laurie Fischer	Dairy Business Association
Dean Doornik	Jon De Farm
Dick Wolkowski	Alfisol Soil Management
Ed Nelson	Dodge County Land Conservation Committee
Dan Prestebak	Dunn County
Eric Birschbach	Ag Site Crop Consulting LLC
Jeanette Bomberg	Florence County
Tom Woznicki	Florence County School District
Todd Jenson	Green County
Gregg Stangl	La Crosse County
Jim Mlsna	Ocooch Dairy
Joe Strupp	Jefferson County
Justin Everson	Barron County
Keith Marquardt	WI Department of Natural Resources
Kevin Lange	WI Natural Resources Conservation Service
David Solin	Langlade County Land Conservation Committee
James Gronowski	Lake Sinissippi Improvement District
Larry Jerrett	Grant County Farm Bureau Board
Larry Jerrett	Individual
Sandy Larson	Larson Acres
Laura Ward Good	University of Wisconsin-Madison
Jerry Halverson	Manitowoc County
James Seefeldt, Elroy Zemke, Gary Wyman	Marathon County
Marian Schemenauer	Individual
Marie Graupner	Langlade County Conservation Department
Marna Lindroth	Individual
Jimmy Parra	Midwest Environmental Advocates
Nancy Lannert	Jefferson County
Tom Zindl	Oak Ridge Pheasant Ranch Inc.
Chase Cummings	Pepin County
Jordan Lamb	WI Pork Association
Cathy Cooper	Richland County
Rick Clark	Individual
Denny Caneff	The River Alliance
Steve Richter	The Nature Conservancy
Todd Koss	Koss Ag LLC
Tom Sitz	Individual

Shelly VanPembrook	Town of Florence
Ed Hernandez	Waushara County
Paul Zimmerman	WI Farm Bureau Federation
Jordan Lamb	WI Potato and Vegetable Growers Association
Jim VandenBrook	WI Land and Water Conservation Association

Summary of Public Hearing Testimony and Written Comments Received

Rule Reference	Proposed Provision	Support	Opposed
50.04(1)	Standard for process wastewater (feed storage leachate and milkhouse waste)	13	2
50.04(2)	Pastures must meet T for tolerable soil loss	23	11
50.04(1)(3)	Implementing P Index on all cropland and pasture	27	27
50.04(3)(gm)	Nutrient management review annual update when necessary	1	5
50.04(3)(hm)	Phase in for farmland preservation program participants and phase in for pasture requirements	17	10
50.04(4)	Tillage setback between 5 to 20 feet	27	15
50.12(2)(j) / 50.18(1)(b)	Establish annual LWRM plan benchmarks.	3	2
50.16(1)(b)	Definition of a farm as adjacent contiguous parcels.	5	16
50.16(1)(c)	5 years compliance deadline and new acres have 1 year to achieve compliance.	1	0
50.16(1)(d)	Incorporate new agricultural performance standards into FPP and timeframe.	18	13
50.16(3)(4)(5)	Monitor compliance /Clarify that LCC or designee can monitor compliance.	13	3
50.28(2)	Timeframes listed for allocation.	19	0

50.28 (5) (a) 1. b./ 50.28 (5) (a) 2. and 3.	Funding extensions	3	0
50.30(1)	High priority to funding county staff.	35	1
50.30(2)	Agricultural priorities for funding	3	29
50.32(4)	Staff support costs may not exceed 10% of a counties annual grant allocation	1	4
50.32(5)	End the mandated \$85K county staff minimum.	2	28
50.32 (7) (b)	Eliminate the Chief Financial Officer signature.	1	0
50.40 (17)	Eliminate cost sharing on government owned lands	2	23
50.42(1)(d)(dm)	Decrease cost sharing to 50% level on some practices.	2	20
50.46(11)(b)	Require two signatures for DATCP engineering certification.	1	4
50.56(6)	Discontinue department manure storage ordinance review	0	6
50.48	DATCP approved training	1	0
50.61(3)	Use of newest technical standards with landowner consent	3	1
50.64 (5) (b)	Nutrient management required with manure storage and barnyard practices	0	0
50.74	Maintain heavy use area protection	12	0
50.705	Process wastewater control systems	1	6
50.885	Allow flexibility for stream crossing or 50.65 access road standards	1	0

Wisconsin Department of Agriculture,
Trade and Consumer Protection

Final Regulatory Flexibility Analysis

Rule Subject:	Soil and Water Resource Management Program
Adm. Code Reference:	ATCP 50
Rules Clearinghouse #:	13-016
Department Docket #:	11-R-01

Rule Description

General

This proposed rule will modify the Soil and Water Resource Management (SWRM) Program under ch. ATCP 50, primarily for the purpose of incorporating the changes in ch. NR 151 adopted by the Department of Natural Resources (DNR) in 2011.¹ Specifically, the changes of most significance for this analysis center on the agricultural conservation standards and practices in subchapters I and II of ATCP 50, requirements for farmland preservation conservation compliance in subchapter III and the technical and other standards for practices cost-shared with state funds in Subchapter VIII. Farmers and others may benefit from other rule changes intended to improve program implementation, such as modifications on cost-sharing for non-farm conservation practices and clarification of the process for certifying engineering practitioners.

Small Businesses Affected

The moderate impacts of this rule will mostly affect farmers, a great majority of whom qualify as “small businesses.” It is important to note that this rule does not impose new runoff control standards on farmers beyond those required by the 2011 changes to NR 151 (2011 DNR standards), and, in fact, this rule takes certain steps to minimize impacts by defining implementation steps. Most farmers will be insulated from some of the costs of implementation because of the state’s cost-share requirement and the limited availability of state funding to provide cost-sharing. For farmers receiving farmland preservation program (FFP) tax credits, this rule provides farmers the flexibility to minimize financial impacts of compliance, including the option of discontinuing collection of a tax credit as a last recourse to avoid compliance responsibilities. Rule changes will also affect businesses other than farmers including nutrient management planners, soil testing laboratories, farm supply organizations, agricultural engineering practitioners, and contractors installing farm conservation practices. The rule will impact these businesses to a much smaller degree, and with primarily positive impacts.

¹ DNR’s final rulemaking order of September 24, 2010, Administrative Rule Number WT-14-08, as well as revised fiscal estimate is available at <https://health.wisconsin.gov/admrules/public/Rmo?nRmoId=1703>

To reach its conclusion regarding impacts on farmers and non-farmers, the department first defines its responsibility to assess impacts in relation to DNR's responsibilities. To place its analysis in context, the department reviewed the cost estimates prepared by DNR as part of its adoption of the 2011 agricultural performance standards. This review includes a discussion regarding DNR's primary justification asserting the limited impacts of the 2011 DNR standards; namely, the cost-share requirement imposed by state law.

The analysis then turns to the impacts directly related to this rule, which focuses on implementation of the 2011 DNR standards. The department separately analyzes the impacts on farmers and non-farmers, and each of these analyses considers the direct costs and benefits of this rule: reporting, bookkeeping and other procedures, and professional skills required. Key aspects of this rule that are designed to minimize impacts of the 2011 DNR standards on farmers are also included in this analysis. The department also considered the requirements of the farmland preservation program, as modified by this proposed rule, in assessing the impacts. After performing this expanded analysis of costs and impacts, the department finds no reason to modify DNR's conclusion regarding the impacts of the 2011 DNR standards, and ultimately the department concludes that this rule will create no more than a moderate impact on farmers and other businesses.

DNR Impact Analysis

When DNR adopted the new and modified state runoff standards for farms as the lead agency responsible for setting performance standards, it analyzed the costs of the new and modified standards as part of its fiscal and business analyses, received public comment, and then summarized its conclusions in its final rulemaking documents.

DNR's 2011 rule revision expanded the runoff standards for farms, and was a minor adjustment in comparison to the 2002 rule that created the new state agricultural performance standards. The 2011 DNR standards defined the framework for the department's limited rulemaking, relegating the department to clarification of the practices and cost-sharing needed to comply with the new ch. NR 151 requirements.

DNR's 2011 rule order added the following new and modified performance standards to address polluted runoff from farms:

- A setback area between cropland and waterbodies within which tillage is prohibited, for the purpose of maintaining streambank integrity and avoiding soil deposits into state waters.
- A new annual and rotational limit on the amount of phosphorus that may run off cropland and pasture, as measured by a phosphorus index.
- Extension of the sheet, rill and wind erosion standard to pastures starting July 1, 2012.
- A prohibition against significant discharge of process wastewater from milk houses, feedlots, and other similar sources.
- A requirement that crop and livestock producers reduce discharges, if necessary, to meet a load allocation specified in an approved Total Maximum Daily Load (TMDL) by implementing targeted performance standards specified for the

TMDL area using best management practices and farm conservation practices in ch. ATCP 50.

- Modification of manure storage standards for existing and new facilities to include margin of safety requirements, and redefine responsibilities for closure.

In its 2011 rulemaking order (p. 10), DNR reached the following conclusion regarding impacts on small businesses: “the overall effect on small businesses may be increased time, labor and money spent on BMPs or planning tools, but there will not be a significant economic impact on small business.” This conclusion applies to most farms which are considered small businesses. Also, the small business focus is a reliable measure of impacts on all farms because many of our state’s largest livestock operations must already meet process wastewater and nutrient management requirements as part of their WPDES permits, including pastures. Confirming this interpretation of overall impacts, DNR’s revised Fiscal Estimate, specifically addressed all private sector impacts and concluded that: “The department [DNR] does not believe that the rule revisions will have a significant fiscal impact on the private sector.”

On the subject of increased time, labor and money, DNR’s rulemaking order (pp. 9 -10) states that: “the rules will not result in additional reporting or significant increases in record-keeping requirements for small businesses. Rather than mandate specific design standards, the rules either establish new performance standards or revise existing performance standards.”

To support its assessment of the financial impacts of the 2011 DNR standards, DNR’s rulemaking order (pp. 9-10) provides the following:

“Agricultural producers who are in compliance with the existing nutrient management performance standard may already be in compliance with the new phosphorus index and tillage setback performance standards. A phosphorus reduction strategy is included in NRCS nutrient management technical standard 590 (Sept. 5, 2005). A phosphorus index of 6 or less is specified in the PI strategy in Criteria C, 2 of the technical standard. The concept of streambank integrity, as proposed through a tillage setback performance standard, is an assumption of the phosphorus index calculation, which estimates phosphorus delivery to the stream via overland flow, but not from bank erosion or other means that soil, manure or fertilizer might enter the stream from farming operations.”

DNR’s revised Fiscal Estimate (p. 4) also discusses provisions of the new standards designed to “limit the financial impact of the new standards on the private sector” and provides these examples:

“In the agricultural portion of NR 151, the Phosphorus Index (PI) performance standard requires that the average PI calculated over an 8-year period shall not exceed 6, and also requires that the PI shall not exceed 12 in any year. Allowing use of planning information until records can be

established will greatly reduce the effort required to document the PI accounting period. Crop producers may use alternative methods to calculate the PI for situations where available tools are not adequate, which will help some producers such as cranberry farmers develop suitable methods to determine compliance. A PI cap of 12 provides considerable leeway to manage crops using conventional methods, although in some cases additional cropping management measures will still be needed such as where corn silage is grown on steeper slopes or where vegetable crops are grown in areas where excessive phosphorus has accumulated in soils. The standard tillage setback requirement is 5 feet, which will not significantly reduce the amount of land available for cropping. The rule contains provisions that allow some bare areas within pastures for cattle travel lanes and supplemental feeding areas. This will allow standard pasturing management, although if such bare areas become significant pollution sources then they will be subject to additional management requirements.”

DNR evaluated specific costs in reaching its conclusions about the new and modified performance standards. For example, the revised Fiscal Estimate (p. 2) provides a detailed calculation in relation to implementation of the new process wastewater performance standard. Based on a \$13.3 million estimate for the cost of full implementation, DNR determined that the state would need \$9,312,500 for landowner cost-sharing, with landowners responsible for paying about \$4.0 million if 70 percent cost-sharing were provided.

Cost-Share Requirement Limits Impact

The state cost-share requirement was critical to DNR’s determination regarding the limited economic impact of the 2011 DNR standards. In support of its position, DNR in the final rulemaking order (p. 10) explains:

“Compliance requirements for agricultural producers vary depending on the type of operation and the performance standard, but the revisions to the rules will not change the existing compliance requirements for agricultural operations. Under state law, compliance with the performance standards is not required for existing nonpoint agricultural facilities and practices unless cost sharing is made available for eligible costs. A less stringent compliance schedule is not included for agricultural producers because compliance is contingent on cost sharing and in many cases, it can take years for a county or the state to provide cost share money to a producer.”

The following facts bear out DNR’s position about the relationship between funding and implementation of the 2011 DNR standards on Wisconsin’s 78,000 farms (2011 Wisconsin Ag Statistics). Based on state cost-sharing provided in the 10 years from 2003-2012, the state is likely to provide no more than \$10-\$13 million annually in cost-share funds for practices in the future, and it is likely that funding may even decline

further.² Annually, eight to ten million dollars in the form of bond revenue funds will be needed to pay for hard practices such as those that control discharges of process wastewater or stabilize streambanks to protect their integrity. Only two to three million dollars are likely to be available each year for nutrient management plans for pastures and soil erosion control practices needed to meet the phosphorus index (PI) performance standard.

In addition to possible reductions in funding based on budget considerations, other factors will limit the amount of state funds available to fund cost-sharing practices to meet the 2011 DNR standards. In the foreseeable future, much, if not all, state funds are likely to be spent on cost-shared practices to comply with the original performance standards and prohibitions adopted in 2002. At the time of their adoption in 2002, the department and DNR estimated that \$373-\$573 million were necessary to fully implement the original performance standards over ten years. In its first ten years of implementation of the designed nonpoint program, DNR and DATCP provided \$100 million in cost-share funding. Less certain in terms of future trends, but no less important, is the probability of additional reductions in state support for county conservation staff. County conservation staff are the only public sector professionals authorized to distribute state cost-share funding from the department and DNR. Any reduction in funds for staff support translates into fewer county staff in the field and diminished capacity to provide technical services and to deliver cost-share dollars.

DATCP Impact Analysis

Under the state framework for managing farm runoff, the department is responsible for implementation of performance standards promulgated by DNR. In the case of the 2011 DNR standards, DNR rule changes went beyond setting performance standards³, further circumscribing the department's rulemaking options and confining the impacts of this proposed rule. In the end, the key focus of ch. ATCP 50 rule revisions involves clarifying the implementation of the new standards for pastures and a tillage setback, and the implications of the new standards for farmer participants in FPP. As noted in the "Accommodation for Small Business", this rule in fact employs measures to minimize those impacts generally, and specifically, in regard to the FPP participants.

Farmers

Implications for Recipients of Farmland Preservation Program (FPP) Tax Credits

² If recent history is any indicator, the state is less likely to increase spending and incur debt. In 2012, for example, the department and DNR each year provided counties about \$10.8 million in cost-share funding, a reduction of nearly \$8.0 million from the amount provided in 2002 when there were fewer performance standards.

³ For example, DNR established the definition of pasture, and assumed responsibility for approving an alternative method for calculating the phosphorous index. Nor can the department address DNR's rule change to eliminate the cost-share requirement for closing manure storage facilities that do not meet s. NR 151.05 (3) and "were either constructed on or after Oct. 1, 2002, or were constructed prior to Oct. 1, 2002 and subject through Oct. 1, 2002 to the operation and maintenance provisions of a cost share agreement."

The impacts from this rule on farmers participating in the FPP arise from the changes related to FPP implementation. In the case of the 15,023 farmers who collected \$18.9 million in farmland preservation tax credits (based on 2012 payments for tax year 2011 claims, <http://www.revenue.wi.gov/ra/FarmPres2012payments.pdf>), they may be required to comply with new and modified standards without receiving cost-sharing. Identifying impacts with precision is complicated by a number of factors including the changes in program participants over time, the compliance status of new participants, and the range of options to achieve compliance.

The department's proposed rule revision has taken several steps to limit impacts on this group by providing time for program participants to comply with the new and modified performance standards, and allowing participants to claim a tax credit on the basis of performance schedules. In addition, the proposed rule has sought to ease the transition to the standards for farmers with pastures by providing soil testing alternatives and an animal density threshold for implementation. Adopted in response to comments on the draft rule, these revised pasture requirements will reduce the number of pasture acres for which a plan is needed, and lower the costs associated with developing a plan in certain cases. Also, farmers may receive cost-sharing to install conservation practices necessary to maintain their eligibility for tax credits. Last, but not least, farmers who feel the compliance burdens are too great may decide to stop collecting a tax credit rather than implement the new standards.

Notwithstanding these accommodations, there is a fiscal impact on FPP farmer participants. To comply with the phosphorus index requirement, some FPP participants may have alternatives short of installing soil erosion control practices to reduce discharges. In the quote from the DNR fiscal estimate (pp. 3-4 above), several options are discussed. However, some participants may need to install conservation practices to reduce erosion on cropland. Farmers will need to develop nutrient management plans for certain pastures. In the end, the department estimates that FPP participants may need to spend five to seven million dollars to develop nutrient management plans for their pastures. In light of the revised pasture requirements adopted in the final rule that reduced the acres covered and consequently reduced the cost of plans, the department anticipates that expenditures will fall on the lower end of the estimate. To meet the process wastewater standard, this rule also provides producers with options to reduce discharges below the significant threshold without installing the most expensive practices required when state or federal cost-sharing is provided. However, to access cost-sharing, some farmers may select higher-cost options which require that they install practices that must fully meet NRCS technical standards and specifications. The department estimates that the costs for meeting the process wastewater standard will range from two to four million dollars.

Recordkeeping and New Skills Required

In considering impacts, the department must evaluate additional reporting or record-keeping requirements imposed on farmers, particularly with respect to nutrient

management planning. Consistent with DNR's assessment, the department believes these impacts will not be significant. Among the chief reasons for this conclusion, the department assumes that these obligations will not arise in most cases unless farmers are provided cost-sharing. For those farmers who must comply with nutrient management requirements related to the new pasture standard or the phosphorus index (PI), they will need to:

- Manage soil test and other data to prepare nutrient management plans.
- Understand and keep records of soil types, soil tests, crop nutrient requirements (including University of Wisconsin recommendations), nutrient applications, nutrient contents of manure, nutrient application scheduling and other matters related to nutrient management. Most farmers have knowledge in some or all of these areas, but some farmers may need to update or expand their knowledge.

The increased requirements for nutrient management planning are slight in comparison with the responsibilities imposed on farmers in 2002 when the nutrient management standards were first adopted for cropland, or in comparison to 2005 when the standard was modified to include the phosphorus component. As noted in the DNR Revised Fiscal Estimate (p. 4), "allowing use of planning information until records can be established will greatly reduce the effort required to document the PI accounting period."

Farmers claiming FPP tax credits already must keep records to document compliance with the DNR performance standards adopted in 2002. For FPP participants, additional recordkeeping created by this rule should be minimal. For example, since farmers already must keep records related to nutrient management plans, farmers should be able to readily incorporate requirements relating to pasture and PI into their systems. However, the changes to the final rule do point out that landowners are responsible for determining their eligibility to receive FPP tax credits when they enter to performance schedules to achieve conservation compliance in the future.

By its nature, the business of farming requires that farmers be skilled at managing changes triggered by the need to incorporate new technologies, respond to growing conditions, or modify production methods. In changing bedding systems for livestock, for example, a farmer must work through a challenging series of steps to deploy new equipment and change management practices, and may use adaptive management techniques to overcome challenges. The skills and experience gained in these settings help farmers manage newly installed conservation practices such as feed storage runoff control systems. Nonetheless, there is a learning curve that farmers must negotiate. In the case of nutrient management, farmers may need to build their skills with computers to take advantage of tools that facilitate tracking of the PI on cropland and pastures.

Whether the challenge involves recordkeeping or new skills, the demands of this rule should be viewed in the larger context of the many programs in which farmers participate. Farmers need to make changes to meet other program requirements including state and local permitting and federal cost-share programs. For example, expanding livestock operations must, at a certain point, control discharges of process wastewater as condition of a required permit. Many programs, from county manure storage permits to

FPP, require that farmers have nutrient management plans for their cropland. For farmers in these programs, it is a small step to add pastures to these required nutrient management plans.

Overall Impact on Farmers

This impact analysis focuses primarily on the costs associated with compliance by participants who claim FPP tax credits. In evaluating the net impact on FPP participants, the department weighed the potential costs against offsetting considerations such as DNR and department rule provisions intended to minimize implementation costs, the option of discontinuing collection of a tax credit as a last recourse to avoid compliance obligations, access to cost-share funds, and the availability of tax credits to offset costs. In its final analysis, the department estimates an impact of eight to twelve million dollars to implement the 2011 DNR standards based on FPP cross-compliance. For reasons discussed earlier regarding changes to the pasture requirements, the department believes overall costs will be on the lower end of this estimate.

The department believes that recordkeeping and other increased responsibilities are offset by a number of factors including DNR and department rule provisions that minimize burdens, and the following potential benefits from implementation of the 2011 DNR standards:

- Promotion of more efficient use of nutrients and cost-savings on fertilizer through nutrient management planning.
- The implementation of conservation practices that provide protection against environmental and other landowner liabilities created by runoff events or groundwater contamination.
- The protection of water quality, particularly for drinking water wells, through conservation practices.
- Improved availability of the department cost-sharing as a result of cutting red tape and adding new efficiencies in managing grant funds.
- Improved focus of limited cost-share funds on support for farmer compliance with conservation practices by restricting the use of cost-sharing on land owned by state and local governments, limiting cost-sharing for practices not required to achieve compliance with state runoff performance standards, and by clarifying that economic hardship is not available to non-farm landowners.
- Provision of a wider range of engineering services from conservation engineers to farmers and others as a result of the simplification of the process for updating their certification.

Non-Farm Businesses

This rule has the following impacts on non-farm businesses, a considerable number of which qualify as “small businesses.”

Nutrient Management Planners and Crop Consultants

This rule will marginally increase the demand for professional nutrient management planners to help implement the phosphorus index and to develop nutrient management plans for pastures. Nutrient management planners who prepare plans for others must be qualified to do so, and these qualifications will equip them to develop plans for pastures. Nutrient management planners must know how to prepare nutrient management plans. They must understand and follow record keeping requirements related to soil types, soil tests, crop nutrient requirements (including University of Wisconsin recommendations), nutrient applications, nutrient contents of manure, nutrient application scheduling and other matters related to nutrient management. Planners holding certain professional credentials are presumed to be qualified. Professionals with the knowledge and skill to use SNAP-Plus, a computer program critical to calculating the phosphorus index, are in a special position to capture new business.

Farm Supply and Farm Service Organizations

This rule will marginally increase the demand for entities that provide services to farmers. Farm supply and farm service organizations may provide nutrient management planning services, crop consulting, fertilizer sales, conservation compliance and other services. They may also sponsor the department-approved training courses for farmers who wish to develop their own nutrient management plans.

This rule will not necessarily increase demand for manure hauling services. Nutrient management planning on pastures will not trigger demand for this service.

This rule is not likely to have a measurable impact on the sales of agricultural fertilizers, since it will not likely to create an increase in sales to those farmers who must manage nutrients more carefully. Persons selling agricultural bulk fertilizer to farmers must record the name and address of the nutrient management planner (if any) who prepared the farmer's nutrient management plan. This rule does not prohibit the sale of fertilizer to a farmer who lacks a nutrient management plan.

Soil Testing Laboratories

This rule will slightly increase demand for soil testing. Nutrient management plans must be based on soil tests conducted by certified laboratories. The department certifies soil testing laboratories and may audit laboratories to ensure accurate testing.

Construction Contractors

This rule will slightly expand the demand for construction of farm practices by contractors, particularly in the area of process wastewater management. This rule does not substantially alter construction standards for new or modified performance standards, nor does it impose any new contractor reporting or recordkeeping requirements. This rule may affect construction demand and the distribution of projects across the state.

Certain changes such as limitations on cost-sharing for non-farm projects may reduce certain business opportunities. This may not affect large contractors who can make adjustments to handle changes in demand, but smaller, less flexible operations may be negatively affected.

Conservation Engineering Practitioners

This rule may increase demand for agricultural (conservation) engineers and engineering practitioners. Certain conservation practices must be designed by licensed engineers or certified engineering practitioners, to ensure safety and effective performance. Engineering costs are eligible for cost-sharing under this rule.

Under this rule, as under prior rules, conservation engineering practitioners must be certified by the department. This rule simplifies current certification requirements and procedures.

Recordkeeping and New Skills Required for Non-Farm Businesses

This rule does not directly trigger changes in reporting, bookkeeping or other procedures for non-farm businesses.

Business professionals will need to enhance their skills to help farmers implement the 2011 DNR standards; however, these professionals will likely take these actions for reasons other than this rule. Engineers and nutrient management planners must keep pace with the latest technical standards to meet the needs of customers and protect themselves from liability. Certain professionals such as engineers and certified crop advisors are required to update their skills to retain their registration or certification.

Reporting, Bookkeeping and other Procedures

To the extent that this rule requires reporting, bookkeeping or other procedures, the department's analysis is included in the prior sections covering impacts on farmers and non-farm businesses.

Professional Skills Required

To the extent that this rule requires changes in professional skills, the department's analysis is included in the prior sections covering impacts on farmers and non-farm businesses.

Accommodation for Small Business

Both DNR and the department have taken steps to identify compliance and reporting effects of these rule changes. In its final rule draft, DNR considered: (1) the existing performance standards and prohibitions in ch. NR 151, (2) the requirements of NRCS

technical standard 590 needed to meet the nutrient management performance standard, (3) assumptions contained in the Wisconsin phosphorus index, and (4) feedback from members of advisory committees that included small business owners and organizations. The department worked extensively with farm representatives and others to minimize adverse effects of this proposed rule on small business. The department took the following actions: (1) worked with DNR to determine the scope of the department rule revision, (2) conducted listening sessions that included farm and conservation groups, (3) held numerous public hearings throughout the state and held the record open afterward to receive written comments, (4) prepared simplified information materials, and (5) reviewed the rule to identify opportunities to minimize impacts and accommodate small businesses.

While DNR's 2011 rule revision established the core requirements, most of which the department could not alter, the department's proposed rule provides accommodations to small businesses. These accommodations minimize the impact on farms and other businesses, both small and large. In general, this rule:

- Clarifies the process for annual review of nutrient management plans to ensure that plans are updated when needed.
- Allows farmers to identify practices to meet new performance standards such as the process wastewater standard, particularly if the discharge can be reduced to below the level of "significant".
- Seeks voluntary compliance with the rule changes to the maximum extent feasible, consistent with the Department's past approach.
- Incorporates NRCS standards for feed storage, manure storage and waste transfer that recognize less costly approaches to manage smaller systems.
- Eases the transition for farmers with pastures by providing soil testing alternatives and an animal stocking rate threshold for implementation of the standard.
- Improves availability of department cost-sharing by cutting red tape and adding new efficiencies in managing grant funds.
- Minimizes the removal of cropland from production in order to comply with the tillage setback within NR151, through interpretation of the tillage setback requirements to include a consistent approach and documentation.
- Enables conservation engineers to provide a wider range of engineering services to farmers and others by simplifying the process for updating their certifications.

In connection with the farmland preservation program, this rule:

- Provides a phase-in for 2011 DNR standards for farmers who must meet the conservation compliance requirements in order to continue to receive farmland preservation tax credits.
- Creates a range of options for a farmer, from a performance schedule to voluntary exit from the program, which will enable farmers to make choices about how to meet the added compliance responsibilities.

Conclusion

This rule will have no more than a moderate impact on farmers, including "small businesses." The limited scope of the rule changes, combined with the cost-share mandate, account for the reduced impact. Other businesses may slightly benefit from these rule changes.

Dated this 26th day of August, 2013.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By 
John Petty, Administrator
Division of Agricultural Resource Management

Wisconsin Department of Agriculture, Trade and Consumer Protection Environmental Assessment

Rule Subject: Soil and Water Resource Management Program
Administrative Code Reference: ATCP 50
Rules Clearinghouse #: 13-016
DATCP Docket #: 11-R-01

This environmental assessment is required by s. ATCP 3.02, Wis. Adm. Code.

Nature and Purpose of Proposed Rule

Chapter ATCP 50 is being revised to implement new and modified farm runoff control standards adopted by the Department of Natural Resources (DNR) in 2011 (hereinafter referred to as "2011 DNR standards"). The 2011 DNR standards require farmers to improve pasture management, maintain a tillage setback, control discharges of process wastewater, meet Phosphorus Index targets for nutrient management, and meet targeted performance standards for Total Maximum Daily Loads (TMDL). Under state law, the Department of Agriculture, Trade and Consumer Protection (the department) is responsible for developing conservation practices and other components necessary to implement performance standards for farms. This rule will update farm conservation standards (Subch. II) and related definitions (including updates to the RUSLE 2 definition), revise the soil erosion standard to include pastures, modify nutrient management planning requirements for pastures, and provide a method for establishing the distance (between five and 20 feet) for a tillage setback.

This rule will improve the framework for the statewide soil and water resource and management (SWRM) program. This rule will clarify the conservation compliance requirements, including a phase-in of the farm runoff standards under ch. NR 151 in the farmland preservation program (FPP). This rule will improve the mechanism for the distribution of department grant funds to counties (Subch. IV), with a primary goal of facilitating farmer access to cost-share funds needed for extended implementation responsibilities, and specify a process for providing cost-share dollars that is more efficient and customer friendly. Also, changes in the rule will simplify the manner in which engineering practitioners are certified.

In most cases, farmers are not required to implement new and modified performance standards unless they receive an offer of 70 percent cost-sharing. This rule will update technical and other standards for practices cost-shared with state funds (Subch. VIII).

Foreseeable Environmental Effects

The environmental effects of this rule are positive. This rule will supply key components to ensure implementation of new and modified farm runoff control standards designed to protect water quality and prevent soil loss by:

- Controlling discharges of process wastewater from livestock operations.
- Reducing soil erosion from pastures.
- Expanding nutrient management plan requirements to include pastures.
- Documenting compliance with nutrient management plans through the phosphorus index.

The addition of new requirements ensures a more comprehensive approach to managing runoff from farms, and enables farmers to take actions that better protect natural resources. Provisions in this rule are designed to reduce unintended consequences from the installation of conservation practices. For practices which are paid for with department funds, cost-share recipients must take actions to mitigate impacts from excavation and other installation activities including measures to manage sediment runoff from construction sites. This rule specifically updates the standards used to mitigate runoff during and after construction of conservation practices.

Through improvements in the Soil and Water Resource Management (SWRM) Program framework, this rule will facilitate farmer access to cost-sharing for conservation practices designed to protect water quality and reduce erosion. This rule will update and expand standards for cost-shared practices, allowing counties to provide cost-share funds for feed storage runoff control and other practices needed to achieve compliance with the 2011 DNR performance standards. By improving the process for certifying engineering practitioners, this rule ensures that county conservation staff and other conservation engineering personnel are better qualified to assist farmers and other landowners with the design and installation of engineered conservation practices.

A number of factors will determine the degree to which farmers implement new and modified standards that will produce increased environmental benefits. The availability of cost-sharing is the most important factor in implementation. Most farmers must receive an offer of cost-sharing to secure compliance. Some farmers may voluntarily choose to comply with the new standards. A small group of farmers may be required to implement these new standards without cost-sharing. Farmers may need to comply to meet local and state permits as a condition for collecting FPP tax credits. Over time, the level of state and federal cost-share funds will be the critical factor in determining the extent to which the 2011 DNR standards are implemented on farms, and the degree of environmental benefits attained.

Based on changes in cost-sharing provided in non-farm settings, there may be less implementation of streambank and shoreline protection and other certain conservation practices using department funds. As noted below, non-farm landowners may have reduced cost-share funds. However, any reduced benefits on the non-farm front will be offset by increased cost-share dollars available to install conservation practices on farms.

Persons or Groups That May Be Affected by the Rule

Farmers: This rule modifies conservation standards that apply to all farms. Most farmers are not required to implement these standards unless they receive an offer of cost-sharing of at least 70 percent (90 percent in the case of economic hardship). This rule will update conservation compliance requirements for FPP participants and the standards for cost-shared practices.

Non-Farm Landowners: This rule modifies standards used to provide cost-share funds for non-farm practices such as streambank and shoreline protection, and projects on land owned by government entities. This rule also restricts the availability of cost-share funds for certain practices.

County Conservation Programs and Cooperators: This rule makes changes to the SWRM program that will impact county conservation programs and cooperators that receive department funding. Counties are primarily responsible for implementation of farm conservation standards and practices including the 2011 DNR standards. This rule clarifies the state standards and practices, such as the tillage setback, that counties implement through conservation programs, clarifies conservation compliance requirements under FPP, and clarifies the manner in which counties use department funds for cost-shared practices.

Conservation- and Farm-Related Businesses: Changes in the rule will provide slight benefits based on increased business opportunities to farm supply organizations, nutrient management planners, soil testing laboratories, engineers, and construction contractors who provide goods and services purchased by landowners who receive cost-sharing.

Rural Residents: Rural residents benefit from activities supported by the rule, including county resource management planning, farmland preservation, technical assistance, and installation of conservation practices. Those neighboring landowners with properties located "downstream" of lands with nutrient and sediment delivery runoff problems also stand to benefit. Certain measures, such as feed storage runoff controls, will protect water quality and assist in safeguarding drinking water wells that serve neighboring landowners and communities.

General Public: The general public will benefit from this rule as a result of increases in farm-focused natural resource protection. Cleaner water has a number of benefits including improved public health and recreational opportunities.

Significant Economic, Social or Cultural Effects

Economic Effects

The economic impact of the proposed rule is moderate. This assessment accounts for the group most significantly impacted by the rule, farmers, and takes into consideration the implications of the 2011 DNR standards for farmers participating in FPP and potential benefits such as liability protection in this rule. This rule is expected to have a minimal but positive effect on businesses that work with farmers such as nutrient management planners, and engineering firms. The *Final Regulatory Flexibility Analysis* contains a detailed analysis of these considerations.

Conservation practices contribute to cleaner surface and ground water, which produces tangible economic benefits. Among other benefits, improvements in water quality protect property values

of waterfront homeowners, reduce treatment costs for drinking water, and enhance recreational opportunities and protect the scenic rural landscape, both of which are essential to tourism.

Social and Cultural Effects

On balance, the proposed rule will produce positive social effects. Through the increased adoption of conservation measures, farmers take positive actions to protect water quality and reduce soil erosion. These actions enhance public acceptance of farming, and strengthen farmers' credibility as environmental stewards. In rural communities, these actions are appreciated by farm neighbors who are concerned about protecting groundwater used as a source of drinking water. Systematic efforts to install conservation practices minimize some of the concerns of the public in urban areas who worry that farmers are not doing their part to protect the environment.

In conjunction with this rulemaking effort, the department has improved its process for assessing the potential impacts of cost-shared projects on cultural resources. These improvements will ensure cultural resources are protected when conservation practices are installed.

Controversial Public Issues

The department has not encountered any major public controversies related to this rule, and does not anticipate such controversies going forward. Chapter NR 151 addressed high profile issues related to the new and modified standards for that rule. In particular, DNR worked out resolutions to standards related to the tillage setback, phosphorus index, and implementation of targeted performance standards in TMDL. DNR took various actions to identify and respond to issues, including feedback from members of advisory committees that included small business owners and stakeholder organizations. Thus, major controversies regarding the performance standards have already been settled.

During the extensive hearing and comment process regarding this draft rule, the department received public feedback on the *implementation* of the new and modified performance standards and other topics such as changes to refocus department funding on farm practices. The department made changes to the final rule to address public concerns. These changes include: refining the tillage setback standard to clarify responsibilities, considerations and methods for achieving compliance; defining nutrient management requirements for pastures to include an animal stocking rate threshold for implementation and soil testing alternatives; allowing 50 percent cost-sharing for projects on land owned by local governments; modifying the definition of "farm" in making FPP compliance determinations; and providing greater oversight in regard to local manure storage ordinances.

Alternatives to this Rule

No Action

Not promulgating the proposed rule would cause the department to be in violation of state statutes. The department is required to promulgate rules prescribing conservation practices to meet performance standards and to specify a process for the development and distribution of technical standards for the practices (s. 281.16 (3) (b), Stats.). The department is also required to promulgate rules related to cost-sharing (s. 281.16 (3) (e), Stats.). If no action is taken, the most recent changes to NR 151 will be implemented using the current version of ch. ATPC 50. Should this occur, some of 2011 DNR standards could be implemented while others may not be implemented, absent the clarification provided by this rule. Unless the department takes action, farmers will not have options to receive cost-share funds for practices such as feed storage leachate runoff control required to meet the 2011 standards, nor will they benefit from other accommodations designed to ease implementation of 2011 DNR standards. Without an update to ATPC 50, counties, farmers and other landowners will be required to follow outdated rule provisions including technical standards that do not provide improved environmental benefits, and may not adequately address stakeholder needs. Failure to update technical standards will result in inconsistent treatment of farmers who must follow one standard for one program and another standard for a different program.

The department must develop applicable land and water conservation standards for owners claiming farmland preservation tax credits (s. 91.80, Stats.). This rule will ensure that the department has in effect the most current standards for conservation compliance.

The department is required to establish, by rule, a nutrient management program (see s. 92.05 (3) (k), Stats.). This rule will enable farmers to use nutrient management planning to implement the phosphorus index on pastures.

The department is required by statute (s. 92.18 (2) (b), Stats.) to develop and maintain requirements of a certification program for the design and installation of conservation practices in conformance with the engineering approval system used by the Natural Resources Conservation Service (NRCS). Without rule changes, the department cannot maintain a conservation engineering program that is consistent with NRCS's parallel program. Failure to update ch. ATPC 50 on this issue would hinder current and future coordination of federal, state and local conservation programs.

Finally, the environmental and other benefits of the 2011 DNR standards will not be realized without the department's rule changes.

Modify Rule Provisions

The department could modify the proposed rule provisions. However, the department developed this rule in consultation with government agencies, organizations and industry groups that have

supported implementation of the 2011 DNR standards and other provisions of this rule. This rule includes specific accommodations to address the needs of the most impacted groups, and represents a fair balance between the business concerns and the need for natural resource protection. The final version of the rule also responds to feedback received during public hearings, as noted above.

Additional Measures to Mitigate Adverse Environmental Effects

The department does not anticipate any adverse environmental effects as a result of this rule. Therefore, no additional measures will be needed to mitigate any adverse environmental effects.

Conclusion

This rule will implement the 2011 DNR standards and make improvements in department programs that will facilitate implementation of these standards. Overall, this rule will have a positive effect on the environment. However, implementation of conservation practices will depend on available cost-sharing. There are no preferable alternatives to this rule. This rule is not a "major action significantly affecting the quality of the environment," for purposes of s. 1.11, Stats. No environmental impact statement is required under s. 1.11, Stats., or ch. ATCP 3.

Signed this 26th day of August, 2013.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By 
John Petty, Administrator
Division of Agricultural Resource Management

ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS

Type of Estimate and Analysis

☐ Original ☒ Updated ☐ Corrected

Administrative Rule Chapter, Title and Number

ATCP 50, Soil and Water Resource Management Program

Subject

Soil and Water Resource Management

Fund Sources Affected

☒ GPR ☐ FED ☐ PRO ☐ PRS ☒ SEG SEG-S

Chapter 20, Stats. Appropriations Affected

20.115(7)(c), 20.115(7)(qe), 20.115(7)(qf),
20.866 (2) (we)

Fiscal Effect of Implementing the Rule

☐ No Fiscal Effect
☐ Indeterminate

☐ Increase Existing Revenues
☐ Decrease Existing Revenues

☒ Increase Costs
☐ Could Absorb Within Agency's Budget
☐ Decrease Costs

The Rule Will Impact the Following (Check All That Apply)

☒ State's Economy

☒ Local Government Units

☒ Specific Businesses/Sectors

☐ Public Utility Rate Payers

Would Implementation and Compliance Costs Be Greater Than \$20 million?

☐ Yes ☒ No

Policy Problem Addressed by the Rule

ATCP 50 is being revised primarily to implement the new and modified agricultural runoff control standards adopted by the Department of Natural Resources (DNR) in 2011 (hereinafter referred to as "2011 DNR standards"). The 2011 DNR standards require farmers to improve pasture management, maintain a tillage setback, control discharges of process wastewater, meet Phosphorus Index targets for nutrient management, and meet targeted performance standards for Total Maximum Daily Loads (TMDLs). Under state law, the Department of Agriculture, Trade and Consumer Protection ("DATCP" or the "department") is responsible for developing conservation practices and other components to implement performance standards for farms. This rule will update the farm conservation standards in Subchapter II and related definitions, including updates to the RUSLE 2 definition, revise the soil erosion standard to include pastures, modify nutrient management planning requirements for pastures, and identify a method for establishing the distance between five and 20 feet for a tillage setback.

In addition, this rule will make adjustments to improve the framework for the statewide soil and water resource management (SWRM) program. In regard to the farmland preservation program (FPP), this rule will better define conservation compliance requirements, including a phase-in of the updated farm runoff standards in NR 151. This rule will improve the mechanism for distributing department grant funds to counties (Subchapter IV), with a primary goal of ensuring that farmers have access to funds needed for extended implementation responsibilities, and identify a process for providing cost-share dollars that is more efficient and customer friendly. Changes in the rule will also simplify the manner in which engineering practitioners are certified.

In most cases, farmers cannot be required to implement new and modified performance standards unless they receive an offer of 70 percent cost-sharing. This rule will update the technical and other standards for practices cost-shared with state funds in Subchapter VIII.

Impact on Business Sectors

This rule will mostly impact farmers, a great majority of whom qualify as "small businesses." The analysis of the impacts on farms takes into consideration the following factors:

- The proposed rule does not add standards for farms as DNR created those standards in 2011. This rule focuses on several mechanisms for implementation of DNR's standards. DNR's analysis of the 2011 standards was consulted when developing this analysis.
- In its implementation of 2011 DNR standards, this rule includes measures intended to minimize the financial impacts to farmers by including alternatives for soil testing and an animal density threshold for implementation of nutrient management on pastures, and limitations on increasing the tillable setback over 5 feet.
- Most farmers will be insulated from costs of implementation by the state's cost-share requirement and limited state funding available to provide cost-sharing.
- For farmers receiving farmland preservation tax credits, this rule provides flexibility that minimizes the financial impacts related to compliance (which range from \$8 to \$12 million), by allowing for the use of performance schedules, providing cost-sharing to those eligible, making tax credits or other benefits available to offset some implementation costs, or by allowing them to elect not to collect tax credits under the farmland preservation program.

The proposed rule changes will have a small, but positive impact on businesses other than farmers. Those businesses include nutrient management planners, soil testing laboratories, farm supply organizations, agricultural engineering practitioners, and contractors installing farm conservation practices. The *Final Regulatory Flexibility Analysis*, which accompanies this rule, provides a more complete analysis of the issue.

Utility Rate Payers

The rule will have no impact on utility rate payers.

State and Local Government

This rule is expected to have minimal impact on local and state governments since neither is likely to increase expenditures to accelerate implementation of the 2011 DNR standards within 10 years. This conclusion is based on spending trends over the last 10 years, which have seen state funding for staffing and cost-share grants remain level or in some cases decline, and trends in reducing county commitments to conservation programming. State and local governments are likely to use existing resources for implementation, and prioritize implementation within their existing framework.

Local governments

Full implementation of the 2011 DNR standards requires increased effort from counties who are the primary entities responsible for implementing farm runoff standards, with the bulk of the workload falling on counties with the highest acres in farmland (40 counties have over 175,000 acres of farmland according to the 2007 Ag Census). Within these agricultural counties, those with farmland preservation program (FPP) participants will see the greatest workload increases. Among other things, counties must develop land and water resource management (LWRM) plans to implement expanded state runoff standards, learn requirements to provide effective technical assistance, conduct systematic evaluations of farms to assess their compliance status, prepare records to document their status, identify and access state and federal cost-share funds needed to install additional conservation

practices, provide technical assistance to design and install needed conservation practices, and monitor compliance status particularly for farmers who claim FPP tax credits. Most of these work activities must be performed even if cost-share dollars are not increased.

The department believes that an additional 40 county land conservation staff are needed to assist farmers in implementing practices to achieve compliance with the 2011 DNR standards, with the greatest need in the 40 counties with the most farmland. Using the latest salary and fringe benefits costs for engineers, outreach specialists and technicians, whose salary falls within the range of \$55,000 to \$65,000 per year per person, the department estimates a total annual increase in cost ranging from \$2.2 to \$2.6 million per year.

Counties are not likely to incur these added costs for needed staff without close to 100 percent state funding for each position. Over the last few years, counties reduced commitments to conservation programs through consolidations and other cost saving measures. Based on the last ten years of spending, the state is unlikely to increase its investment in local conservation staff. In the 2013-2015 biennial budget, the state annual appropriations for county conservation staff will remain below the 10 year average of \$9.3 million from 2001 to 2011. Without new resources to pay for staff, counties will prioritize their workload, fitting implementation of the 2011 DNR standards into their existing programs as best they can. Reduced capacity is most likely to impact farmers who need assistance to meet conservation compliance responsibilities associated with the farmland preservation program.

In addition to the increased demand for grant funds to pay for county staff, the state will need to provide landowner cost-sharing to achieve compliance with 2011 DNR standards, and deal with new responsibilities for oversight related to implementation of 2011 DNR standards. In terms of increased debt and appropriations to fund cost-sharing, neither the statutes nor rules demand any specific level of commitment to provide cost-sharing. In the foreseeable future, the department does not anticipate increased expenditures by the state, and therefore is not including increased costs for cost-sharing.

State

Since the nonpoint program redesign was first adopted in 2002, state funding of county staff and landowner cost-sharing has been the ultimate factor driving implementation of the performance standards and prohibitions. While the statutes set goals for state funding [see. s. 92.14(6) (b)], the state is not obligated to provide funding at any particular level to support implementation. As noted above, the state is not likely to increase investment in county staff in the near future.

For similar reasons, the state is not likely to provide additional funding for cost-sharing. If recent history is any indicator, the state will be less inclined to spend taxpayer money and incur debt. In 2012, for example, the department and DNR provided counties about \$10.8 million in cost-share funding, a reduction of nearly \$8.0 million from the amount provided in 2002 when fewer performance standards were in effect. In the foreseeable future, the department anticipates that much if not all of state funds are likely to be spent on cost-shared practices to comply with the original performance standards and prohibitions adopted in 2002. The *Final Regulatory Flexibility Analysis*, prepared with this rule, provides an analysis of the impacts on farmers as a result of inadequate cost-share funding.

It is reasonable to assume that the rule changes will increase the workload for the department in the following areas: the revision of underlying technical standards, outreach and education, training in the use of SNAP-Plus and other implementation tools, grant oversight and management, farmland preservation compliance monitoring, development of program policies and procedures, technical assistance to install conservation standards, and enhanced coordination with USDA Natural Resources Conservation Service (NRCS) involving training and other matters. Additionally, since counties

cannot add staff as result of limited resources, the department will need to fill in the gaps to provide technical assistance for conservation engineering projects and nutrient management planning. In consideration of these factors, the department estimates 2.0 FTE will be required to perform the additional work, with a significant focus of this workload on nutrient management implementation for pastures and the phosphorus index, and conservation engineering for new practices such as feed storage leachate control systems.

State's Economy

While it is difficult to assess the rule's specific impact on the state's economy as a whole, since there are many variables at play, this rule's overall impact is expected to be negligible. First and foremost, it is critical to note that this rule does not impose new runoff control standards on farmers beyond those required by the 2011 DNR standards. This rule's purpose is limited to facilitating implementation of the 2011 DNR standards, primarily with respect to participants who claim FPP tax credits, and this rule takes certain steps to minimize impacts by defining implementation steps. In its limited application, this rule will have the financial impacts discussed in this document and the *Final Regulatory Flexibility Analysis*. In considering the impacts on the state economy as whole, these costs must be balanced against benefits generated by this rule, including improvements in water quality of lakes and rivers that support recreation and tourism, and increased spending power of FPP participants who can continue to claim FPP tax credits or other benefits.

Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Benefits

By facilitating implementation of the 2011 DNR standards, this rule will result in the installation of conservation practices and capital improvements that directly prevent water quality problems and reduce soil erosion. This rule is expected to result in positive environmental impacts. By facilitating implementation of the following farm runoff control standards, this rule is designed to protect water quality and prevent soil loss by:

- Controlling discharges of process wastewater from livestock operations.
- Reducing soil erosion from pastures.
- Expanding nutrient management plan requirements to include pastures.
- Documenting compliance with the phosphorus index through nutrient management plans.

The addition of new requirements ensures a more comprehensive approach to managing runoff from farms, and enables farmers to take actions that better protect natural resources. Provisions in this rule are designed to reduce unintended consequences from the installation of conservation practices. For practices paid for with department funds, cost-share recipients must take actions to mitigate impacts from excavation and other installation activities including measures to manage sediment runoff from construction sites. This rule specifically updates the standards used to mitigate runoff during and after construction of conservation practices. Through changes in cost-share standards and conservation engineering requirements, this rule will also enhance technical and other support for conservation. A full discussion of the benefits is provided in the *Environmental Assessment* prepared in connection with this rule.

Those landowners, whose soil and water resources are improved or protected as a consequence of implementing the 2011 DNR standards, realize certain benefits. By controlling farm runoff and reducing groundwater pollution, these landowners can protect resources that are essential to their business and safeguard their families. Reducing soil erosion maintains the conditions for successful crop production, while controlling discharges from the farm's production can prevent contamination of drinking water wells. Farmers who take corrective actions can reduce their environmental and liability risks. By coming into compliance with conservation requirements, farmers may maintain

their eligibility for programs such as the FPP tax credits.

Landowners with properties located "downstream" of lands with nutrient and sediment delivery runoff problems also stand to benefit from the conservation practices required to meet the 2011 DNR standards. For example, nutrient management plans for pastures can improve water quality. Such improvements may help protect the property values of neighboring landowners, particularly those with non-farm holdings.

The general public will benefit from the 2011 DNR standards, but the benefits will vary depending on location and the resource concerns of a particular area. Cleaner water can have direct economic benefits particularly for businesses associated with tourism and recreation. Because of the cost-share requirements, tax dollars will be needed to fund grants that must be provided to farmers to install conservation practices.

Alternatives

No Action

Not promulgating the proposed rule would cause the department to be in violation of state statutes. The department is required to promulgate rules prescribing conservation practices to meet performance standards and to specify a process for the development and distribution of technical standards for the practices [s.281.16(3)(b), Stats.]. The department is also required to promulgate rules related to cost-sharing [s.281.16(3)(e) Stats.]. If no action is taken, the most recent changes to NR 151 will be implemented using the current version of ch. ATP 50. Should this occur, some of 2011 DNR standards could be implemented while others may not be implemented absent clarification provided by this rule. Unless the department takes action, farmers will not have options to receive cost-share funds for practices such as feed storage leachate runoff control required to meet the 2011 DNR standards, nor will they benefit from other accommodations designed to ease implementation of the 2011 DNR standards. Without an update to ATP 50, counties, farmers and other landowners will be required to follow outdated rule provisions including technical standards that do not provide improved environmental benefits and may not adequately address stakeholder needs. Failure to update technical standards will result in inconsistent treatment of farmers who must follow one standard for one program and another standard for a different program.

The department must develop applicable land and water conservation standards for owners claiming farmland preservation tax credits [s.91.80, Stats.]. This rule will ensure that the department has in effect the most current standards for conservation compliance.

The department is required to establish, by rule, a nutrient management program [see s.92.05(3)(k), Stats.]. This rule will enable farmers to implement nutrient management on pastures.

The department is required by statute [s.92.18(2)(b), Stats.] to develop and maintain requirements of a certification program for the design and installation of conservation practices in conformance with the engineering approval system used by the Natural Resources Conservation Service. Without rule changes, the department cannot maintain a conservation engineering program that is consistent with NRCS's parallel program. Failure to act on this rule will hinder future coordination of federal, state and local conservation programs.

Finally, the environmental and other benefits of the 2011 DNR standards will not be realized without the department's rule changes.

Modification

The department could modify the proposed rule provisions beyond the accommodations described below. However, the department developed this rule in consultation with government agencies, organizations and industry groups that have supported implementation of the 2011 DNR standards and other provisions of this rule. This rule includes accommodations that address the needs of the most impacted groups, and represent a fair balance between business concerns and the need for natural resource protection. Responding to feedback received during public hearings, the final rule includes additional changes to minimize its impacts. In this regard, this rule:

- Clarifies the process for annual review of nutrient management plans to ensure that plans are updated when needed.
- Allows farmers to identify low cost options to meet new performance standards such as the process wastewater standard, particularly if the discharge can be reduced below the level of significance.
- Seeks voluntary compliance with the rule changes to the maximum extent feasible, consistent with the department's past approach.
- Incorporates NRCS standards for feed storage, manure storage and waste transfer that recognize less costly approaches to manage smaller systems.
- Eases the transition for farmers with pastures by allowing alternatives for soil testing and an animal stocking rate threshold for implementation of nutrient management.
- Improves availability of department cost-sharing by cutting red tape and adding new efficiencies in managing grant funds.
- Minimizes the removal of cropland from production necessary to comply with NR 151, through an interpretation of the tillage setback requirements that requires a consistent approach and documentation.
- Enables conservation engineers to provide a wider range of engineering services to farmers and others by simplifying the process for updating their certification.

Long Range Implications of Implementing the Rule

Implementing 2011 DNR standards is a long-term endeavor. The minimum period for assessing implementation is a ten year horizon. First and foremost, the availability of state and other cost-share funding will determine progress in implementing these standards. If state funding does not increase from current levels, it is not likely that we will see significant progress during the first ten years of implementation. Lapses and other reductions in grant funding, similar to those imposed during recent years, could also slow progress.

This rule cannot be implemented without effective support for the local delivery system provided by county conservation programs. County staff ensures that farmers receive the technical and financial assistance needed to meet their conservation responsibilities. If current trends in state funding persist, efforts to sustain the local capacity to implement the 2011 DNR standards will be lost. On the other hand, increased state funding as described above may keep implementation on track.

Long-term implementation will be defined by the provisions in this rule intended to minimize the impact on farms and other businesses (see the list of accommodations discussed in prior sections). Some of these provisions include a phase-in for the new and modified performance standards for farmers who must meet the conservation compliance requirements to continue to receive a farmland preservation tax credit.

Ultimately the progress made toward implementing the 2011 DNR standards will determine the extent of the improvements in water quality protection and soil erosion control, which are the ultimate goals

of the rule.

Compare With Approaches Being Used by Federal Government

NRCS adopts standards for conservation practices receiving cost-share funds from NRCS. Current DATCP rules incorporate many NRCS standards by reference. In most cases, the standards apply only to conservation practices receiving cost-share funds from DATCP. But in some cases (such as nutrient management), DATCP rules incorporate the NRCS standards as mandatory pollution control standards. Enforcement of these mandatory standards is generally contingent upon cost-sharing (there are limited exceptions).

While NRCS sets national standards, the standards vary, to some extent, between states. NRCS coordinates its Wisconsin standard-setting process with DATCP, DNR and others. For purposes of Wisconsin's soil and water conservation program, DATCP may incorporate NRCS standards as written, or may modify the standards as appropriate. This rule will modify current DATCP rules that incorporate NRCS standards by reference. This rule may incorporate updated NRCS standards, or may modify NRCS standards to make them more clear or workable in Wisconsin's soil and water conservation program. It will allow landowners receiving cost-sharing to voluntarily take advantage of new NRCS standards as they are developed, but not yet incorporated into rule; thereby ensuring that they get the most value for their investment in practices.

NRCS provides job approval for engineering practitioners who design, install or approve conservation engineering practices receiving NRCS grant funds. DATCP certifies practitioners who perform similar functions under DATCP rules. As noted above, this rule makes changes to better match the state and federal programs, which ultimately will benefit the landowners who rely on technical services from engineering practitioners.

The United States Department of Agriculture administers a number of federal programs that offer voluntary conservation incentives to farmers. The Environmental Quality Incentives Program (EQIP) is a key program offering cost-sharing for conservation improvements, including nutrient management plans, manure storage improvements and other conservation practices. As a result of confidentiality requirements, federal cost-sharing provided to landowners through this and other NRCS cost-share programs cannot be publicly disclosed. Without accurate historical data about past use of NRCS cost-sharing to implement state conservation standards, it is difficult to account for the role these funds may play in the future.

Other programs, such as the Conservation Reserve Program (CRP) and the Conservation Reserve Enhancement Program (CREP) also provide cost-sharing and other incentives for conservation practices. DATCP attempts to coordinate state programs for conservation funding with relevant federal programs.

Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

This comparison examines how surrounding states are addressing issues related to the 2011 DNR standards, with particular focus on the implementation of such standards through farmland preservation activities. In general, the adjacent states do not use statewide performance standards specifically designed to address polluted runoff from agricultural sources. However, these states have various regulations and procedures in place to address many of the polluted runoff sources that these rule revisions address. All four states use the phosphorus index in some form but none use it in the same manner as NR 151 provides. For example, phosphorus management strategies in Michigan are implemented as part of the state's Generally Accepted Agricultural and Management Practices (GAAMPs). Wisconsin's approach differs from the programs in adjacent states in that it has more detail in its phosphorus index, is more quantitative and has more research to validate it. Also, in

Wisconsin, pursuant to s. 281.16, Stats., cost-sharing must be made available to existing agricultural operations before the state may require compliance with the standards. Cost-sharing is often tied to compliance responsibilities in adjacent states, but there are instances where farmers must meet standards other than the phosphorus index as part of regulatory programs.

Illinois

Using a different framework and programming, Illinois implements several standards similar to those adopted in Wisconsin. In addition to implementing a phosphorus index for large livestock operations, Illinois encourages the equivalent of a tillage setback for croplands through a property tax incentive related to the construction of livestock waste management facilities. This incentive applies to the installation of vegetative filter strips in cropland that is surrounding a surface-water or groundwater conduit. Illinois law does not allow raw materials, by-products and products of livestock management facilities, including milkhouse waste, silage leachate, and other similar products to be discharged to waters of the state.

While Illinois has a statewide farmland preservation program in which landowners may restrict the use of their land to agricultural or related uses in exchange for tax credits, the program does not include conservation compliance requirements.

Iowa

Like Illinois, Iowa requires that nutrient management plans for livestock operations of 500 or more animal units be based on the phosphorus index. Iowa does not require a separation distance between tillage activities and waterbodies. Iowa prohibits discharges to waters of the state, polluting waters of the state and discharge to road ditches. Medium-sized livestock operations are required to install runoff controls to eliminate discharges of process wastewater into waters of the state. See Iowa's website at: http://www.iowadnr.gov/portals/idnr/uploads/afo/fs_desncriteria_medcafo.pdf

While Iowa operates a county-based statewide farmland preservation program in which landowners may restrict the use of their land to agricultural or related uses in exchange for tax credits, the program does not include conservation compliance requirements.

Michigan

Michigan relies on GAAMPs [see *Generally Accepted Agricultural and Management Practices for Manure Management and Utilization* (January 2012)] to support the Michigan Agriculture Environmental Assurance Program (MAEAP), which includes a compliance verification process that ensures nuisance protection to farmers under Michigan's Right to Farm law. GAAMPs covers standards similar to those in Wisconsin including standards for process wastewater and pasture management. These standards are implemented as part of the state's right to farm law and its complaint investigation program. The state assesses problems identified through complaints, and farmers must take corrective action to earn nuisance protection under the right to farm law.

Michigan does not require a separation distance between tillage activities and waterbodies. The state's regulatory requirements regarding process wastewater only apply to permitted concentrated animal feeding operations, but discharges from smaller farms are generally prohibited as a violation of water quality standards.

While Michigan has a statewide farmland preservation program in which landowners may restrict the use of their land to agricultural or related uses in exchange for tax credits, the program does not include conservation compliance requirements

Minnesota

Minnesota implements a variation of a tillage setback in limited settings, requiring a 16.5 foot (one rod) grass strip along certain public drainage ditches as well as vegetated strips, restored wetlands, and other voluntary set-aside lands through federal, state and local programs. For process wastewater, Minnesota rules place a limit of less than 25 mg/l BOD5 (biological oxygen demand) that can be released to surface water and, if released to a leach field, the threshold is less than 200 mg/l BOD5. State and local officials work with pasture owners to prevent and abate water quality violations (Minn. R. chs. 7050 and 7060) that may be created by sediment or nutrient runoff from poorly managed pastures.

Under its feedlot program, Minnesota imposes mandatory requirements on about 25,000 registered feedlots. This program requires feedlot owners, ranging in size from small farms to large-scale commercial livestock operations, to “register with the MPCA, and meet the requirements for runoff discharge, manure application and storage, and processed wastewater.”

While Minnesota has a statewide farmland preservation program in which landowners may restrict the use of their land to agricultural or related uses in exchange for tax credits, the program does not include conservation compliance requirements.

Public comments including comments in Response to Web Posting

Both DNR and the department have undertaken extensive efforts to receive public feedback. DNR received feedback from members of advisory committees that included small business owners and organizations. The department took the following actions: (1) worked with DNR to determine the scope of the department rule revision, (2) conducted listening sessions that included farm groups, (3) held numerous public hearings throughout the state and held the record open afterward to receive written comments, (4) prepared simplified information materials, and (5) reviewed the rule to identify opportunities to minimize impacts and accommodate small business.

On January 25, 2013, the department posted the hearing draft rule and other documents as required on the department and Wisconsin administrative rules websites to receive comment on the economic impacts of the proposed rule. The department sent email notification to individuals who requested information about the rule and to other persons that the department identified to be interested in the proposed rule. Comments were accepted for a 30-day period as required by the moderate economic impact of the proposed rule.

The department received comments related to the economic impact of this rule from county stakeholders including multiple counties located in the northern part of the state. Their comments focused on the proposed rule's impact on the award and use of department funds to operate land and water conservation programs. Specifically, the comments addressed the following issues: the elimination of the minimum staffing grant requirement, requirements in ch. 92, Stats., to fund county conservation programs, a 10 percent cap on reimbursement of support costs for county staff, restrictions on landowner cost-sharing including a 50 percent maximum cost-share rate for certain non-farm practices, and the level of appropriations and authorizations received by the department to fund county staff and cost-sharing.

After reviewing the comments, DATCP has determined that they do not alter the economic impact analysis of ATCP 50 for the following reasons:

1. Regarding comments on the potential impact of this rule on county staffing grants, the department considered the possible impacts of eliminating the minimum annual staffing grant

and capping support costs, and determined on balance that this action would provide the department greater flexibility to best meet county staffing needs statewide. Specifically, these changes ensure that department funds pay for actual costs related to staff work assisting landowners. In addition, this rule does not specify funding outcomes for any individual county, even though funding criteria have been added by this rule. Each year, the department will make policy decisions to award grants to counties by using the expanded funding criteria in this rule to develop a grant application. Any changes in the annual allocation based on redefined criteria and priorities will not diminish total funds available for grant awards, but will re-distribute benefits of the program. To the extent that ch. 92, Stats., requires certain funding of counties, this rule does not conflict with the statute. Also this rule cannot control appropriations and authorizations provided to the department to fund county programs.

2. Regarding comments on the potential impact of this rule on county cost-sharing, the department considered the possible impacts on certain landowners and small businesses, including farms and local contractors, of establishing a 50 percent maximum cost-share rate and the elimination of cost-sharing on government-owned land. The department determined on balance that this action would maximize statewide funding to support installation of conservation practices on farms. In reaching this conclusion, the department considered that landowners have access to cost-share programs operated by other agencies such as NRCS and DNR that may offer cost-sharing at higher rates or on government-owned land. In addition, this rule does not specify funding outcomes for any individual county, even though funding criteria have been added by this rule. Each year, the department will make policy decisions to award grants to counties by using the expanded funding criteria in this rule to develop a grant application. Any changes in the annual allocation based on redefined criteria and priorities will not diminish total funds available for grant awards, but will re-distribute benefits of the program. To the extent that ch. 92, Stats., requires certain funding of counties, this rule does not conflict with the statute. Also this rule cannot control appropriations and authorizations provided to the department to fund county programs.
3. Regarding comments on the potential for negative impacts to property values due to the proposed rule revisions, the department considers that on balance the rule revisions provide greater flexibility to meet resource concerns statewide, which may result in overall increased property values due to focusing implementation and addressing priority resource mitigation opportunities.

The department responded to each stakeholder who provided comments with the explanation provided in this EIA and encouraged them to submit their comments orally, in writing, or during the hearing comment period. After reviewing the EIA comments and comparing those persons who commented to the listing of persons affected contained in the scope statement, the department determined it did not need to update the stakeholder listing with the Governor's Office of Regulatory Compliance.

During the extensive hearing and comment process with respect to the draft hearing rule, the department received public feedback on the implementation of the new and modified performance standards and other topics such as changes in the cost-sharing of non-farm practices. The department made changes to the final rule to address public concerns. These changes include refining the tillage setback standard to clarify responsibilities, considerations and methods for achieving compliance; defining nutrient management requirements for pastures to include an animal stocking rate threshold for implementation and to provide soil testing alternatives; allowing 50 percent cost-sharing for projects on land owned by local governments; modifying the definition of "farm" in making FPP compliance determinations; and providing greater oversight in regard to local manure storage ordinances.